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U.S. Citizenship
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Services

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[Redacted]

FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: **MAR 31 2008**
SRC 06 223 50528

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree or an alien of exceptional ability. The petitioner seeks employment as an assistant professor. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director did not contest that the petitioner qualifies for the classification sought, but concluded that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel contested the director's decision on the Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO), and submitted new evidence. Counsel also indicated that she would submit a brief and/or additional evidence in 30 days. As of February 26, 2008, this office had received nothing further. Thus, on that date, this office inquired by facsimile as to whether counsel had submitted anything further. In response, counsel stated that she had not supplemented the appeal and resubmitted the evidence enclosed with the original appeal. As noted above, the original appellate filing does include a statement contesting the denial and new evidence. Thus, the appeal will be adjudicated on its merits. For the reasons discussed below, we uphold the director's finding that the petitioner has not demonstrated why the alien employment certification, which has been obtained by the petitioner's employer, should be waived in the national interest.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --

(A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in Electrical and Computer Engineering from the University of Texas at Austin. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Commr. 1998)(hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

We concur with the director that the petitioner works in an area of intrinsic merit, engineering, and that the proposed benefits of his work, improved visualization technology, would be national in scope. This finding, however, is based on the petitioner's research work. The fact that the petitioner

may provide excellent instruction does not warrant a national interest waiver as the benefits of one instructor at the national level are negligible. *Id.* at 217, n.3. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYS DOT*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." *Id.* at 221. Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.*

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra element of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

As stated above, the petitioner obtained his Ph.D. from the University of Texas at Austin. As of the date of filing, the petitioner was an assistant professor at Jackson State University. The petitioner initially submitted seven letters from his immediate circle of colleagues at these two institutions, a collaborating institution and the funding agency overseeing his research. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of industry interest and positive response in the field are less persuasive than letters that provide specific examples of how the petitioner has influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are the most persuasive.

[REDACTED], a professor at the University of Texas at Austin, discusses the petitioner's Ph.D. dissertation on Very Large Scale Integrated circuit (VLSI) design at that institution. [REDACTED] explains:

[The petitioner] has proposed a ground-breaking idea on fully automatic synthesis and optimization of CMOS circuits at the transistor level. He has explored the theoretical foundation so that automatic synthesis process is independent of any cell library. In addition, the automatic synthesis process is able to generate a cell library for any particular circuit. He has implemented a unified framework that performs automatic transistor level synthesis, functional and timing model extraction, hierarchical timing optimization of CMOS circuit.

While [REDACTED] concludes that this work demonstrates the petitioner's "proficiency," [REDACTED] does not provide any examples of how the petitioner's dissertation has influenced the field as a whole.

Some of the petitioner's colleagues at Jackson State University characterize him as "promising and talented." More specifically, [REDACTED], Associate Dean of the College of Science, Engineering & Technology at Jackson State University, notes that the petitioner has pursued Smart Sensor technology under a grant from Northrop Grumman Ship Systems (NGSS) and is currently working on the High Performance Computing Visualization Initiative (HPCVI), funded by the Army Engineer Research and Development Center (ERDC). As part of his project for the NGSS, the petitioner provided new methods to test smart sensors. While [REDACTED] asserts that the results from the petitioner's studies provided invaluable information for NGSS, [REDACTED] further explains that NGSS had to discontinue the petitioner's involvement in the project due to his nonimmigrant status. Finally, [REDACTED] affirms that the petitioner's work for the HPCVI is benefiting academia, the defense industry and homeland security. [REDACTED] does not, however, provide examples of achievements the petitioner has already made on this project.

[REDACTED], Chair of the Chemistry Department at Jackson State University, praises the petitioner's ability to learn, even in different disciplines. While [REDACTED] predicts that the petitioner's work on the NGSS project "will have potential benefit for future NGSS programs," Dr. [REDACTED] provides no examples of how the petitioner's work has already influenced the field.

[REDACTED], Chair of the Computer Engineering Department at Jackson State University, discusses the petitioner's research projects and proposals and concludes that the petitioner "has made many significant contributions." [REDACTED] does not identify those research contributions or explain how they have already influenced the field as a whole. [REDACTED] notes that Jackson State University previously obtained an alien employment certification in behalf of the petitioner but asserts that the certified form was never received from the Department of Labor (DOL). The fact that the university was unable to obtain a copy of the certified Form ETA 750 in behalf of the petitioner is not a reason why that requirement should be waived in the national interest. If anything, the certification reveals that the petitioner's skills are amenable to enumeration on an application for alien employment certification. The petitioner has not established that the national interest waiver was intended to remedy

lost certifications. On appeal, counsel implies that the petitioner is now requesting CIS to obtain a duplicate certification from DOL. The instant petition, however, was filed seeking a waiver of the alien employment certification. Thus, this proceeding is not the appropriate proceeding in which to seek a duplicate of the lost certification.

Director of the Graduate Engineering Program at Jackson State University, affirms that the petitioner's work on the HPCVI project "can be applied in various areas, such as military applications and homeland security. I am extremely confident that [the petitioner's] achievements will definitely benefit our country." Once again, [REDACTED] fails to provide examples of how the petitioner's engineering research has already influenced the field.

[REDACTED], an associate professor at Stevens Institute of Technology who submitted a research proposal in collaboration with the petitioner, praises the petitioner's talent, diligence and professionalism. Their joint proposal involved tele-diagnosis and tele-mammography. [REDACTED] does not affirm any noteworthy achievements on the project. In fact, the record contains a May 10, 2005 letter from the Department of the Army declining to fund this research proposal.

On appeal, the petitioner submits another letter from the Stevens Institute of Technology, written by Dr. [REDACTED]. Dr. [REDACTED] asserts generally that the petitioner has demonstrated "a very promising accomplishment in the field of computer engineering" and asserts that his current project is very important to the national interest. Dr. [REDACTED] further asserts that he petitioner's published paper on traffic monitoring "fully demonstrated his breakthrough effort and significant contributions to the seamless integration of networking capabilities into a visualization aware environment." [REDACTED] does not, however, provide examples of how the petitioner's work is being applied in the field.

[REDACTED], a computer engineer at ERDC, asserts that the petitioner's research paper on traffic monitoring presented at a 2006 conference in Seattle "fully demonstrated his breakthrough effort and significant contributions to the HPCVI project" that ERDC funds. [REDACTED] does not explain the significance of this research paper or explain how it has influenced the field. Rather, she explains at length the significance of the petitioner's current HPCVI proposal "to integrate the networking capabilities into a visualization aware environment translating the available network capabilities into visualization capabilities with seamless integration of the applications and the underlying networks." While [REDACTED] predicts that this work will benefit the national interest, she does not explain how the petitioner has already made contributions that have influenced the field.

The petitioner does not submit copies of his authored published articles. Rather, he submits two patents, one book chapter, three articles, an internal report and an internal presentation that cite one of his two presentations at a conference in 1999. In addition, the petitioner's collaborator at the University of Austin cited the petitioner's Ph.D. dissertation. Some of these citations postdate the filing of the petition, the date as which the petitioner must establish his eligibility. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). The majority of the citations of the petitioner's presentations are by Debashis Bhattacharya, who, according to his patent, resided in

Plano, Texas at that time. The other patent that cites one of the petitioner's presentations is from an Austin, Texas research team. These citations cannot demonstrate the beneficiary's influence beyond Texas. Moreover, the citations do not single out the petitioner's work as particularly influential in the field. The book chapter merely cites the petitioner as one of "several researchers" who have recently demonstrated techniques to derive transistor netlist structures using Binary Decision Diagrams. The article "A Structural Approach for Transistor Circuit Synthesis" cites the petitioner as an example of "a number of heuristics" that have been developed for synthesizing multi-output multi-stage CMOS circuits. This minimal citation record cannot establish that as of the date of filing, the petitioner had already established a degree of influence in the field as a whole.

On appeal, the Honorable Senator Trent Lott requests that the petitioner be accorded permanent resident status because he is directing a critical research project at the Trent Lott Geospatial and Visualization Research Center at Jackson State University. Senator Lott asserts generally that the petitioner's expertise has been invaluable in benefiting academia, industry and homeland security. The issue of the petitioner's eligibility for permanent resident status in general is not before us. The narrow issue on appeal is whether the petitioner has demonstrated that a waiver of the alien employment certification process is in the national interest. As with all petitions, we have afforded this petition all due consideration in reviewing the evidence. It remains, however, that the record lacks evidence that the petitioner has already made influential contributions to his field. As stated above, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *NYS DOT*, 22 I&N Dec. at 219. It is not in the national interest to waive the alien employment certification for an alien with no demonstrable prior achievements, whose benefit to the national interest would thus be entirely speculative. *Id.*

While the petitioner's research is no doubt of value and his proposed research relates to areas with potential significance to the national interest, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any Ph.D. thesis or other research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge or works with a government grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.