



U.S. Citizenship  
and Immigration  
Services

TO:

DATE: FEB 13 2012

Petition: Form I-140

File

Number:

Beneficiary:

**NOTICE OF INTENT TO DENY**

Reference is made to Immigration Petition for Alien Worker (Form I-140) filed on August 29, 2011 in accordance with Section 203(b)(2) of the Immigration and Nationality Act (INA 203(b)(2)). After consideration, it is the intent of U.S. Citizenship and Immigration Services (USCIS) to deny Form I-140.

A review of the evidence on record indicates that you are seeking classification under Section 203(b)(2) of the Act and filed a self-petition on August 29, 2011 to perform services as a Researcher (Post-Doctoral Fellow). In addition, you are seeking an exemption of the job offer by virtue of a national interest waiver.

The petitioner seeks to classify himself as an advanced degree professional. The petitioner has not established that he holds a PhD from Peking University. Therefore, if the petitioner completed his education outside the United States, in addition to the official academic record, please submit a detailed advisory evaluation of the transcripts. This evaluation is necessary to determine the level and major field of your education in terms of equivalent education in the United States. An acceptable evaluation should:

- Consider formal education only, and not practical training or experience;
- State whether the beneficiary completed the United States equivalent of high school before entering college;
- Provide a detailed explanation of the evaluated material, rather than a simple conclusive statement; and
- Briefly state the evaluator's qualifications and experiences.

The remaining issue in this matter is whether it has been established that a waiver of the job offer, and thus of a labor certification, would be in the national interest.

The Administrative Appeals Office (AAO), in *Matter of New York State Dept. of Transportation* (AAO, 1998) provided a three prong test to determine whether a waiver of job offer is in the national interest. In order to meet the national interest threshold, a petitioner must establish that:

1. The area of intended employment is of substantial intrinsic merit;
2. The proposed benefit must be national in scope; and,
3. It would be contrary to the national interest to potentially deprive the prospective employer of the services of the alien by making the position available to U.S. workers.

The intrinsic merit and national scope of the petitioners work is not immediately apparent. The area of the petitioner's intended employment has been described in terms so vague that it is not clear whether the

proposed employment has substantial intrinsic merit. Nor does the record indicate how the impact of the petitioner's proposed activities will be national in scope.

Further evidence is needed to establish that the national interest would be adversely affected if a labor certification is required.

A national interest waiver generally hinges on the prospective benefit of the alien's work, and the record of evidence must establish a past record that justifies further projects that would be of benefit to the nation. Merely making subjective assurances and statements that an alien's future work will serve the national interest cannot suffice to establish the current prospective national benefit or demonstrate the substantial intrinsic merit of one's work.

The petitioner's assurance that he will, in the future, serve the national interest cannot suffice to establish prospective national benefit. While the national interest waiver hinges on prospective national benefit, it must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's Curriculum Vitae (CV) contained a bibliography that listed 122 publications. All but two (2) of the 122 articles were derived from "The Belle Collaboration", which is, as explained by Alan J. Schwartz PhD of the University of Cincinnati, "a large international collaboration of approximately 400 physicists." The authors are listed alphabetically, except for the first line which appears to be the principal researchers. The articles, when reviewed under that context, the petitioner emerges as only a principal researcher in two (2) articles. A search of Google Scholar for the article "Systematic impact of spent nuclear fuel..." finds only one (1) citation.

Based on the evidence submitted it has not been established that your past record justifies projections of future benefit to the national interest.

The assertions regarding the overall importance of your area of expertise cannot suffice, however, to establish eligibility for a national interest waiver. The issue in this case is not whether a Researcher in Physics is in the national interest, but whether you, to a greater extent than U.S. workers having the same qualifications, plays a significant role in that field. You submitted testimonial letters from the following:

Kuang-Ta Chao, Director of the Institutes of Theoretical Physics at Peking University  
Steve Kettell of Brookhaven National Laboratory  
Maury C. Goodman of Argonne National Laboratory  
Mark D. Messier, PhD at Indiana University  
Alan J. Schwartz of the University of Cincinnati

Kuang-Ta Chao states that "The Belle Collaboration" won the Nobel Peace Prize in 2008 for principal investigators Kobayashi and Maskawa and that the petitioner played a leading role in several important measurements leading to the prize-winning results.

Steve Kettell, notes that you contributed significantly to the Daya Bay reactor anti-neutrino experiment. You determined the systematic uncertainty on the measurement of  $O_{13}$  from spent nuclear fuel (SNF) at the Daya Bay reactors. You also played a role in developing state-of-the-art offline software for Daya Bay.

Alan J. Schwartz, states that your main work at Belle (The Belle Collaboration) was measuring the branching fractions. You developed several new methods to improve the sensitivity of the measurement.

The letters provide no specific evidence that you possess qualifications over and above those of US citizens or that you have played a significant role in the scientific research field. While The Belle Collaboration is/was a of major significance in the Physics field it does not appear that recognition for your individual work on the project has shown that you have played a significant role in the field of Physics.

Any objective qualifications which are necessary for the performance of the occupation can be articulated in an application for alien labor certification. The fact that the alien is qualified for the job does not warrant a waiver of the job offer/labor certification requirement. The benefit the alien's skills or background will provide to the United States

must also outweigh the inherent national interest in protecting U.S. workers through the labor certification process.

It appears that the majority of your research has been conducted as part of a team. In order to evaluate the magnitude of your contribution to the team, please provide additional documentary evidence, which should include, but is not limited to:

- A complete copy of the grant proposal(s) and grant approval(s).
- If the research was not conducted by virtue of grant funding, please submit a statement from an authorized official of the research institution that would identify the means by which the research was funded.
- A statement from the individual who managed the research project, such as the Department Chairperson or Director of Research, that describes in plain English, the individual, specific contribution of each principal researcher who participated on the beneficiary's research project(s). In addition, please indicate the level of compensation that was given to each of the principal researchers.
- Copies of your performance evaluations that are contemporaneous to the published research.

While you have provided evidence pertaining to the research team's contributions to scientific discovery, you have not provided any specific, detailed evidence showing your role in this research. The evidence should clearly demonstrate how your contribution to the research exceeded that of your co-researchers.

The record does not clearly show that you are the initial or primary motivator behind ongoing projects which are central to the discovery or advancement in the field of Physics. The record does not contain evidence that you have developed any technology or made any scientific discoveries or innovations. While your work has clearly impressed some experts in the field, the record does not demonstrate that you have established a track record of success that would provide a strong assurance of future, national benefit to the United States. Your work has not resulted in findings of major significance in your field that have been widely implemented or that you are more skilled than others who perform the same or similar type of work.

The evidence should clearly demonstrate the significance of your efforts in the field. It should be evident that your findings have enjoyed widespread implementation and acceptance by the scientific community. An alien cannot obtain a national interest waiver simply by demonstrating that he or she holds a patent. Whether the specific innovation serves the national interest must be decided on a case by case basis. The evidence has not shown that the petitioner has established a track record of success that would provide a strong assurance of future, national benefit to the United States.

Although the petitioner has been shown to be a competent Physicist whose skills and abilities are of value to his current employer, it has not been established that a job offer waiver based on national interest is warranted. 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

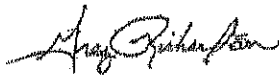
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Page 4 of 4

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 the merits of the individual alien as they relate to the job to be performed. The fact that an alien may play an important role in Physics research is insufficient to establish eligibility for a job offer waiver based on national interest, since qualified U.S. workers may be available to play a similar role.

Based upon the above reasons, the petitioner is hereby notified that it is the intent to USCIS to deny Form I-140. The petitioner has thirty (30) days (33 days if this notice is received by mail) to submit state what is required. Any evidence submitted will be carefully reviewed. Failure to submit evidence in support of Form I-140, or failure to respond to this Notice of Intent to Deny, may result in the denial of Form I-140 based upon the reasons set forth in this Notice of Intent to Deny.

Sincerely,



Greg Richardson, Director  
Texas Service Center  
Officer XM359

cc: Annie Yang  
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