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U.S. Citizenship and Immigration Services

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FEB 26 2004

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date:
WAC 03 072 52109

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as an Outstanding Professor or Researcher pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(B)

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.

for Mari Johnson
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner, an internet pay-for-performance search service provider, seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B), as an outstanding professor or researcher. The petitioner seeks to employ the beneficiary as an "Algorithm Research Scientist." The director determined that the beneficiary works as an engineer rather than a researcher, and therefore does not qualify for the classification sought.

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

> (1) Priority Workers. -- Visas shall first be made available ... to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
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> (B) Outstanding Professors and Researchers. -- An alien is described in this subparagraph if-
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> (i) the alien is recognized internationally as outstanding in a specific academic area,
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> (ii) the alien has at least 3 years of experience in teaching or research in the academic area, and
>
> (iii) the alien seeks to enter the United States --
>
> (I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,
>
> (II) for a comparable position with a university or institution of higher education to conduct research in the area, or
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> (III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

The regulation at 8 C.F.R. § 204.5(i)(3) states that a petition for an outstanding professor or researcher must be accompanied by:

> (iii) An offer of employment from a prospective United States employer. A labor certification is not required for this classification. The offer of employment shall be in the form of a letter from:
>
> (A) A United States university or institution of higher learning offering the alien a tenured or tenure-track teaching position in the alien's academic field;
>
> (B) A United States university or institution of higher learning offering the alien a permanent research position in the alien's academic field; or

(C) A department, division, or institute of a private employer offering the alien a permanent research position in the alien's academic field. The department, division, or institute must demonstrate that it employs at least three persons full-time in research positions, and that it has achieved documented accomplishments in an academic field.

In a letter accompanying the petitio[redacted] Director of Human Resources, Overture, Inc., states that the petitioner will be responsible for "initiating and executing applied research projects, developing new and innovative algorithms and heuristics, translating theoretical results into applications in accordance with business strategies, defining milestones for research projects' progress, [and] researching competing technologies."

The director issued a request for evidence instructing the petitioner to "[s]pecify in greater detail the duties and responsibilities of the beneficiary as well as his job title and how [it] would qualify as a research position."

In a letter responding to the director's request, [redacted] tates:

[The beneficiary] is an integral part of Overture's research team. The goal of [the beneficiary's] research is to create innovative algorithms and develop mathematical and computational models and heuristics that will enable fast and accurate information extraction from large amounts of data available on the web and in proprietary advertising databases. With the size of the web exceeding one billion pages today, efficient and effective web search requires the design of new algorithms and approaches. In particular, [the beneficiary's] research currently addresses the following important topics.

- Research of new algorithms for data grouping and clustering;
- Investigation and prediction of the scalability properties of the World Wide Web;
- Application of modern linear algebra models to information retrieval systems;
- Construction of learning systems for information classification;
- Evaluation of competitive technologies for data mining; and
- Research of new efficient methods for algorithmic web search and context retrieval.

The director denied the petition, stating:

While the petitioner has defined the beneficiary's tasks as research, the tasks appear to be engineering tasks carried out by workers in virtually all major computer technology companies. The beneficiary's present position is, essentially, as an engineer who uses existing principles and technology to solve practical problems, rather than someone who engages in scholarly or advanced theoretical research, that is comparable to the work of researchers at universities or other institutions of higher education.

* * *

Upon review, the petitioner has failed to establish that the beneficiary is performing research.... As such, the beneficiary does not qualify for the benefit sought.

On appeal, counsel disputes the director's conclusion that the beneficiary's tasks are more relevant to an engineering position rather than a research position. The petitioner submits several letters on appeal in order to prove that the position offered is indeed a research position.

[redacted] Chief Technology Officer, Overture, Inc., states:

> Overture Research is an established division within our company and is organizationally distinct from the engineering and consumer divisions.... It has as its main mission the goal of advancing the state-of-the-art in information retrieval, data mining, machine learning, efficient algorithms, and other related areas in computer science by creating and researching new ideas and methods for information organization and retrieval.
>
> All members of Overture Research either conduct research or directly assist and support other members that perform research. Overture Research members are very active in the academic community (through publications, conferences, and workshop participation and organization, collaborations with university researchers, etc.)... This division does not use existing principles and technology to solve practical problems, rather they engage in scholarly or advanced research, which is comparable to the work of researchers at universities.
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> * * *
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> [The beneficiary's] specific research activities are focused on creating and researching new ideas and methods for information retrieval. More specifically, [the beneficiary's] current goal is to create new algorithms for data grouping and clustering (data mining) which facilitate information retrieval from both the World Wide Web and proprietary databases. The size of the available data and the complexities of the variables that impact the problem of information organization and retrieval require that new mathematical and computational models are developed in order to advance these areas of information science, and [the beneficiary's] specialized skills and innovative research are already contributing to our theoretical understanding of these scientific questions.
>
> [The beneficiary's] approach pioneers new linear algebra algorithms. In particular, he is working on two novel approaches to the problem: one based on a graph representation of the data, with the clustering problem viewed as a graph partitioning, and the second approach takes advantage of correlation properties of data. Both methods are comparable to university research as they are currently being studied at major universities and require a significant amount of theoretical research before they can be implemented.
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> * * *
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> Similar to researchers at a university, the researchers at Overture disseminate their findings to the academic and research community. For example, during the last year [the beneficiary] presented his research in internal Overture [research and development] seminars.... He co-authored a book chapter to appear in the book Methods for Mining Web Communities: Bibliometric, Spectral and Flow. Additionally, he authored and co-authored several technical reports that will be submitted to...peer reviewed research conferences.

The record contains evidence of three of the beneficiary's book chapters published in 2001, 2002, and 2003.

[redacted] Professor of Computer Science, California Institute of Technology, states that he has examined work performed by the beneficiary at Overture, Inc. He further states:

> As a result, I affirm that [the beneficiary]...is engaging in scholarly research that is comparable to the work of researchers at universities. His duties are specifically those of a researcher, according to the standards of the international academic community. In fact, [the beneficiary] is a university researcher himself, since he also holds a notable research position, a visiting faculty position at Caltech called a Visiting Associate.
>
> The research activities [the beneficiary] is performing at Overture are the same types of activities that he is performing at Caltech. At Overture and Caltech he researches new ideas, creates mathematical models, publishes research papers, attends scientific conferences, presents scientific results in seminars and meetings, creates technical reports, and follows the current academic development[s] in his academic field.

[redacted] Professor of Computer Science, University of California, Berkeley, states:

> Regarding [the beneficiary], his research concentrates on [the creation] of new algorithms for data grouping and clustering. One of the approaches he employs is based on formulating the clustering problem as a graph partitioning problem. Optimal graph partitioning has been a significant focus for numerous academic researchers including myself. His work suggests novel approaches that should lead to improved insight...

[redacted] Assistant Professor, Department of Electrical Engineering and Computer Science, University of Michigan, states that the beneficiary "is engaged in solid research activities." He adds: "I can state with conviction that [the beneficiary] is not an engineer, but rather a researcher involved in research at a truly academic level."

[redacted] Associate Professor of Computer and Information Science, University of Pennsylvania, states:

> I am familiar with the research being conducted at Overture and in their research department and can state with confidence that this division's focus is on scholarly and advanced theoretical research that is comparable to the work of researchers at recognized universities. This division does not perform ordinary engineering tasks. In fact, similar research is being conducted at my university.

[redacted] Professor of Computer Science and Mechanical Engineering, Drexel University, states that "the research currently performed in [Overture's] research division, including the algorithm research group, is clearly basic science in the classical sense, and theoretical in nature – consistent with the level and type of advanced scholarly research being performed at leading universities."

[redacted] Professor of Computer Science, Carnegie Mellon University, states that Overture's "research scientists are not just engineers who are using existing principles and technology to solve practical problems," but instead conduct "scholarly and advanced theoretical research" similar to that which is being conducted at Carnegie Mellon.

The documentation presented on appeal is strong evidence that the petitioner is involved in the creation of new algorithms for data grouping and clustering, which reasonably falls under the aegis of research.

An individual whose duties consist entirely of product design through configuration of existing technology, or preparation of specialized software using widely available software packages, is not engaging in research. In this instance, however, the latest submission of materials demonstrates that the beneficiary has engaged, and continues to engage, in research for the petitioner. The beneficiary's work involves innovation and theorization and transcends product design and software engineering. We find that the totality of the petitioner's evidence (including the book chapters from 2002 and 2003) indicates that the beneficiary's work to develop new algorithms would qualify as "scholarly or advanced theoretical research" in his academic area. The petitioner has thus overcome the only stated ground for the denial of the petition. Based on the evidence submitted, we conclude that the petitioner has established that the beneficiary qualifies under section 203(b)(1)(B) of the Act as an outstanding researcher.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.