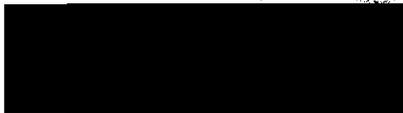




U.S. Department of Justice
Immigration and Naturalization Service

105

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Public Copy

File: [Redacted]

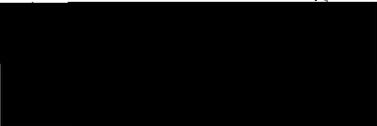
Office: Texas Service Center

Date: JUL 12 2001

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)

IN BEHALF OF PETITIONER:



Identifying... to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained and the petition will be approved.

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 an alien of exceptional ability. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but 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. In his decision, the director listed the evidence submitted, but provided no analysis of the evidence.

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

It appears from the record that the petitioner seeks classification as an alien of exceptional ability. This issue is moot, however, because the petitioner holds a Masters Degree in Computer Science from Michigan Technological University and, thus, qualifies as a member of the professions holding an advanced degree. An additional finding of exceptional ability would be of no benefit to the petitioner in this proceeding. As stated in Matter of New York State Dept. of Transportation, I.D. 3363 (Acting Assoc. Comm. for Programs; August 7, 1998), a labor certification is still required for aliens who demonstrate exceptional ability unless the alien demonstrates the requirement should be waived in the national interest. The remaining issue, then, is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor Service regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "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).

Supplementary information to Service regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

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 Dept. of Transportation, I.D. 3363 (Acting Assoc. Comm. for Programs, August 7, 1998), 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. Next, it must be shown that the proposed benefit will be national in scope. 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.

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. 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.

The petitioner is a Ph.D. student at Rice University where he performs research at one of seven sites of the Center for Research on Parallel Computation (CRPC). The petitioner works directly with [REDACTED] the director of CRPC, a National Science Foundation consortium of six universities and laboratories headquartered at Rice University. [REDACTED] was also appointed by then President Clinton to the Presidential Advisory Committee on High-Performance Computing and Communications, Information Technology, and the next Generation Internet.

Professor Kennedy states:

[The petitioner] has made several crucial contributions as a member of the D System Research Group. In the past ten years, memory latency has been the major performance bottleneck. [The petitioner] has demonstrated that the bandwidth constraint is a more serious constraint on today's advanced micro-processors than latency. This shift has profound implications for both academic researchers and industry engineers. Data throughput efficiency is a different problem from memory

latency. The problem requires researchers to rethink exiting [sic] techniques and search for new solutions. [The petitioner] is at the forefront of this challenge.

Recently, [the petitioner] conducted a detailed study in which he measured the bottleneck of data throughput on today's advanced machines. He proposed and examined a set of performance tuning and prediction techniques based on the interprocedural bounded section analysis of the interval-flow graph representation of a program. In a preliminary evaluation on a widely used parallel benchmark from NASA, his techniques proved to be much simpler and more effective than the existing methods. More importantly, [the petitioner] is in the process of developing compiler optimization technology to alleviate and perhaps eliminate this bottleneck on data throughput by aggressive program transformations.

Initially, the petitioner provided other letters from professors at Rice University and Michigan Technological University, where the petitioner received his Masters Degree, who provide similar praise of the petitioner's work. The petitioner also provided copies of his published articles and a letter from Cambridge University Press thanking him for reviewing a manuscript.

On July 22, 1999, the director requested additional evidence that waiving the labor certification requirement would be in the national interest. In response, the petitioner submitted a more detailed letter from [redacted]. In the letter [redacted] recaps the petitioner's research and states:

This breakthrough has attracted the attention of the research group in Los Alamos National Laboratory working on simulation of nuclear weapons, as well as attention from the National Libraries of Department of Energy and Department of Defense. Enterprises like Portland Compiler Group, Compaq, and Intel just to name a few, have also contacted us and have shown great interest in this technology.

...

I have interviewed numerous researchers, and we have yet to find any other sufficiently qualified applicants to perform these multiple tasks. I am therefore convinced that even if a Labor Certification Proceeding were conducted, it would be difficult to find an equally qualified researcher to perform [the petitioner's] high-level tasks.

...

Even if a qualified U.S. researcher could be found for the position, it is unlikely that the person replacing [the petitioner] would be as familiar with the problems we are dealing with, much less the software infrastructure we are building to solve these problems. Therefore, he or she could not serve the national interest to a similar degree.

Furthermore, a U.S. worker with the same qualifications would be unable to perform the same occupation and serve the national interest to a similar degree. Indeed, the most likely replacement for [the petitioner] would be another foreign researcher, who would need at least three years of training to reach the level of qualification of [the petitioner]. Therefore, no U.S. worker will be adversely affected if a National Interest Waiver is granted to [the petitioner]. However, a Labor Certification Proceeding would significantly impede our research.

[REDACTED] arguments are not persuasive. Unfortunately, the record contains no support for his assertions of how the petitioner's research will benefit NASA or other government agencies. Specifically, the record does not contain a letter on behalf of NASA or any other government organization. In addition, Matter of New York State Dept. of Transportation specifically rejects arguments regarding an alleged shortage of U.S. workers.

[The] assertion of a labor shortage, therefore, should be tested through the labor certification process. . . . The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor.

Matter of New York State Dept. of Transportation further states:

Nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employees (or self-petitioning aliens) to avoid the inconvenience of the labor certification process.

Thus, we reject [REDACTED] argument regarding the length of time it would take to get a labor certificate for the petitioner.

Finally, [REDACTED] provides no explanation for his assertion that no U.S. worker with the same qualifications as the petitioner could do his job. [REDACTED] final assertion that the only person who could take the petitioner's place would be a foreign researcher with an additional three years of training is troubling. [REDACTED] appears to assert that what is significant about the petitioner is the fact that he is not born in this country and has been trained at the CRPC. We cannot accept the implication that foreign researchers are somehow superior to U.S. researchers, and that U.S. researchers, even with the same qualifications and three years of training, are unable to compete.

Regardless of our concerns with [REDACTED] arguments, the record contains additional evidence suggesting a waiver of the labor certificate is in the national interest. The petitioner submitted two letters from independent scientists in his field. Kathleen Knobe, researcher at the Cambridge Research Lab (CRL) at Compaq Computer Corporation states:

We at CRL are in close contact with [the petitioner's] group for two reasons. Since the group is at the top of the field both nationally and internationally, the quality of the students is very high; [sic] In addition, the research focus of the group, compilation technology for high performance computing, is of great interest to our company.

...

[The petitioner] submitted a paper this year to the Conference on Programming Language Design and Implementation. This is one of the most prestigious conferences in this field and acceptance of papers is very competitive. I was on the program committee for this conference. All papers were reviewed by three members of the program committee and two outside reviewers. The reviews of his paper were all very positive. It was very quickly agreed by all members of the committee that this paper should definitely be included in the conference.

[The petitioner] then presented his work at the conference. The presentation was well received. I personally heard several attendees mention [the petitioner's] as one of the most important papers presented.

Wei Li, Manager of Microcomputer Software Labs, Intel Corporation, states:

As one of the top researchers in the field of memory system optimization, I have been following the research work closely in the field including the work by [the petitioner]. A well-known work of mine was published in the 1995 ACM SIGPLAN Conference on Programming Language Design and Implementation, where we combined computation and data reorganization to achieve significantly better memory performance. [The petitioner's] work attracted my attention when he published his paper in the same conference this year. His paper successfully expanded the scope of data transformation from compile time (in our work) to run time. His technique thus enables memory system optimization even on programs where [sic] computation pattern is irregular and dynamically changing. His work is the first to achieve dynamic memory optimization through automatic compilers, and it represents the best approach for improving memory performance for such applications for the time being.

...

[The petitioner's] work is extremely important to our national interest because of the dramatic improvement on microprocessor performance produced by his research. Progress like his helps Intel not only produce the fastest computers in the world but also to provide customers the best achievable performance otherwise impossible without the advanced memory system optimizations. [The petitioner] is

irreplaceable in fully realizing the benefit of his work because he is the best expert available to further expand the scope of his work to invent more powerful techniques on these optimizations.

In addition, the record contains a letter addressed to the petitioner from the Cambridge University Press expressing appreciation for his review of a manuscript. It would have been stronger had the petitioner submitted evidence that the Cambridge University Press specifically sought his review, as opposed to seeking the review of someone at CRPC which was assigned to him by CRPC management. The record, however, contains additional evidence that the petitioner's opinion is sought by other experts in his field. On appeal, the petitioner submits two email messages from professors at other universities revealing his notoriety beyond his collaborators. Specifically, Professor [REDACTED] at the Massachusetts Institute of Technology requested the petitioner's review of a paper submitted to the PLDI conference and Professor Dave Wonnacott at Haverford College requested a preprint of the petitioner's upcoming presentation.

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 field of research, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes that the community recognizes the significance of this petitioner's research rather than simply the general area of research. The benefit of retaining this alien's services outweighs the national interest which is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor 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, U.S.C. 1361. The petitioner has met that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.