



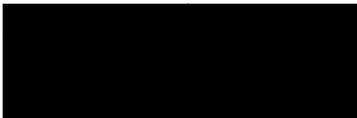
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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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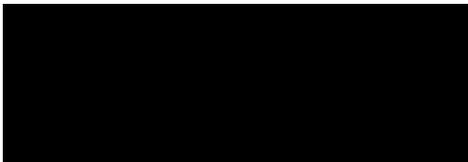
File: [REDACTED] (LIN-98-144-52966) Office: Nebraska Service Center

15 OCT 2002
Date:

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 data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision 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.

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 that 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 that 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, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations 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. 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.

On appeal, counsel discusses several cases at length (including non-precedent cases), criticizes the director for concluding that the petitioner had failed to adequately document what type of work he would be doing, and asserts that the petitioner's experience qualifies him for the waiver.

We note that on December 18, 2000, AT&T filed an application for a labor certification with the Department of Labor (DOL), which DOL certified. On June 12, 2001, AT&T filed a new Form I-140 petition with the Director, Vermont Service Center. That director approved the petition on September 20, 2001. That petition is the basis for a Form I-485 Application to Register Permanent Residence and Adjust Status filed by the petitioner on November 28, 2001. Approval of this application would render this petition moot. Nevertheless, on January 28, 2002, counsel requested a decision on the instant appeal. As such, we will issue a decision on the merits of the appeal. We note, however, that AT&T's receipt of a labor certification in behalf of the petitioner suggests that a waiver of that requirement is not only not in the national interest but moot.

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.

The petitioner holds a Master's degree in Electrical Engineering from Colorado State University. 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 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, 22 I&N Dec. 215 (Comm. 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 director concluded that because the petitioner was still completing his Ph.D. studies and had yet to secure employment, he could not establish that his work would have intrinsic merit or that the proposed benefits would be national in scope. We disagree. It is clear from the record that the petitioner's area of research is telecommunications, an area of intrinsic merit. Moreover, the proposed benefit of his work in that area, increased network efficiency, is clearly national in scope. 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. 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 burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at note 6.

The petitioner submitted letters from his thesis advisors and collaborators at the University of Colorado, Dr. Timothy Brown and Dr. V. Chandra, describing the petitioner's work with artificial neural networks. Randall S. Bloomfield, a lecturer at the University of Colorado, provides similar information. Dr. Yizi Xu of the National Institute of Standards and Technology in Colorado writes that developing a single communication network is complicated because each source uses a different type of signal, resulting in irregular traffic. Dr. Xu further asserts that most proposed solutions would not be efficient. He continues:

As a result, [the petitioner] has made a revolutionary proposal to design a single network that can handle the variety of signals through the use of artificial intelligence technologies. He is developing an intelligent controller that can control and respond to the signals in the network on its own. This development is calculated to allow for the development of an efficient and revolutionary communication network that can control its own flow and remain efficient despite conflicting and heterogeneous signals.

. . . Moreover, [the petitioner] is not only developing a controller with artificial intelligence, but he is also integrating statistical multiplexing into the network so as to improve its efficiency. Statistical multiplexing will increase the efficiency of the communication network by ensuring that the entire broadband communication network is always in use, so that at the precise moment that a signal from one source ends, a signal from another source will pick up this opportunity to transmit on the broadband network. . . . Finally, [the petitioner] is the only researcher in the nation currently incorporating statistical multiplexing into the reinforcement learning based broadband communication network controller.

Dr. Willie W. Lu, Senior Member of the Institute of Electrical and Electronics Engineers (IEEE) in New Jersey, asserts that he knows the petitioner from his publications and that they represent major contributions to the field. He concludes that the petitioner's work is "truly revolutionary and represents one of the most promising technologies in this field to date." Dr. Satinder Singh of AT&T in New Jersey provides general praise of the petitioner and asserts that the labor certification process is not applicable to the petitioner. As stated above, AT&T has now obtained a labor certification for the petitioner. As such, Dr. Singh's arguments are not persuasive.

Jin-Bao Huang, the petitioner's former professor at Southeast University in China, asserts that the petitioner has an impressive research history. Albert Hsueh, a systems principal engineer and group leader at Rockwell Semiconductor Systems in Newport Beach, California, asserts that the petitioner's work is groundbreaking and has received widespread acclaim. Finally, Dr. Hsueh asserts that the petitioner's rare combination of communications and artificial intelligence experience is necessary for his area of research. Dr. Hsueh does not indicate how he became familiar with the petitioner's work.

The above letters are mostly from the petitioner's collaborators and immediate colleagues. The petitioner is clearly respected by his colleagues and known in the geographic areas where he has worked, Colorado and New Jersey, but the letters do not establish the petitioner's influence over the field as a whole. While Dr. Hsueh appears to be a disinterested reference, he provides no explanation for how he heard of the petitioner's work. Moreover, while the letters suggest that the petitioner's work may be novel and promising, there is no indication that, as of the time of filing, the petitioner's ideas had been adopted or were being tested by major telecommunications companies.

The petitioner has authored a published article and several conference reports. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces the Service's position that publication of scholarly articles is not automatically evidence of influence on the field; we must consider the research community's reaction to those articles.

The record does not include any evidence that independent researchers have cited the petitioner's articles or reports.

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 labor certification will be in the national interest of the United States. As stated above, the petitioner is now the beneficiary of an approved petition in the same classification based on a labor certification obtained by AT&T.

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



ORDER: The appeal is dismissed.