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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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

PUBLIC COPY



File: WAC 99 208 52433 Office: CALIFORNIA SERVICE CENTER Date:

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

APR 02 2003

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:



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.

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 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 seeks employment as a research assistant in circuit design and wireless communication systems. 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 did not dispute that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but found 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.

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) Subject to clause (ii), the Attorney General may, when the Attorney General 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 obtained a Bachelor of Science degree in electrical engineering from Sharif University of Technology, Iran in August 1994. He obtained a Master of Science degree in biomedical engineering from Case Western Reserve University in August 1996. At the time he filed the petition on July 23, 1999, the petitioner was a research assistant at Stanford University and a doctoral candidate. 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 pertinent 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 pertinent 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.

In this case, the director did not contest that the petitioner had established that he would be employed in an area of substantial intrinsic merit and that the proposed benefit of the petitioner's employment, improved wireless communication technology, would be national in scope. However, the director did not find that this petitioner had established that he would serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. We concur with the director.

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.

Eligibility for the waiver must rest with the alien's qualifications rather than with the position sought. This applies whether the position is publicly or privately funded. It is generally not accepted that a given project is of such importance that any alien qualified to work on it must also qualify for a national interest waiver. The 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 sought. 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 219, n. 6.

Along with witness letters, academic records, and copies of published articles, the petitioner submits evidence indicating that he was a member of Iran's 1990 "International Physics Olympiad" team and was also the recipient of a Stanford graduate fellowship. Although impressive, academic achievements are not evidence of a petitioner's professional recognition. The petitioner also includes a February 2000 "outstanding student designer award" from Analog Devices, copies of a patent application filed in 2001, and a copy of his student membership in the Institute of Electrical and Electronics Engineers. As noted previously, the immigrant visa petition was filed July 23, 1999. Events occurring after the date of filing cannot retroactively establish eligibility. A petitioner must establish eligibility for the visa classification at the time of filing. *Matter of Katigbak*, 14 I&N Dec. 190 (Reg. Comm. 1972). Additionally, even if such evidence represented recognition for achievements and memberships in professional associations in the petitioner's field, those are simply two requirements for aliens of exceptional ability, a classification that normally requires a labor certification. We cannot conclude that satisfying one, or even the requisite three criteria for a classification that normally requires a labor certification warrants a waiver of the labor certification requirement in the national interest.

The petitioner submits numerous witness letters in support of his petition. [REDACTED] a professor of electrical engineering at Stanford, summarizes the importance of the wireless communications industry, includes excerpts from other testimonials submitted on the petitioner's behalf and concludes:

[The petitioner's] tremendous talent, numerous, innovative research achievements, and the great extent to which integrated wireless circuit and system design research has depended, and will continue to depend, upon his leadership and contributions, distinguishes him from other U.S. workers possessing the same minimum, objective qualifications. The wireless communications industry has reaped tangible benefits from [the petitioner's] special abilities and expertise.

[REDACTED] a professor of electrical engineering at Stanford, also commends the petitioner's abilities [REDACTED] states:

[The petitioner] is well known for his pioneering research in GPS receiver chip design and wireless LAN systems. He is applying his considerable expertise to design low-power radio frequency (RF) integrated circuits for wireless and portable systems. His efforts have contributed significantly to inexpensive RF technology for many military and commercial applications such as global positioning receivers, handheld cellular and PCS wireless phones, advanced cordless telephones and wireless local area data network terminals.

[REDACTED] a founder of Freespace Communications, knew the petitioner at Stanford while [REDACTED] was pursuing his Ph.D. [REDACTED] credits the petitioner's research with contributing

to the realization of "robust, cheap and compact CMOS GPS receivers, thereby making possible a multitude of new applications of the GPS system that are important for both civilian and military use." [REDACTED] also states that the petitioner's work relating to wireless LANs "demonstrates novel, practical techniques for greatly reducing the cost, size and power consumption of such systems."

[REDACTED] a senior associate dean of the engineering department at Stanford, regards the petitioner as one of the most talented and productive students. [REDACTED] states:

At Stanford, [the petitioner's] research has focused on the design of CMOS RF circuits for wireless communications systems, particularly portable global positioning system (GPS) transceivers and wireless local area networks. As part of this research, he has developed a novel design methodology for realizing precision, low-power frequency dividers and synthesizers in modern CMOS VLSI technologies. Frequency synthesizers are crucial to the successful implementation of the radio receiver front ends, and [the petitioner's] work has enabled the successful design and integration of a CMOS front-end for a 5-GHZ wireless local area network (WLAN) receiver. Such receivers are essential to the development of fast, portable and cost-effective internet access in both home and office environments.

[REDACTED] and [REDACTED] of IBM in New York and California, respectively, provide virtually duplicate testimonials on the petitioner's behalf. Both letters summarize the petitioner's qualities in identical language and assert that "[the petitioner] is currently conducting cutting-edge research at the Center for Integrated Systems (CIS) at Stanford on CMOS RF circuits for wireless systems particularly for global positioning systems (GPS) and wireless local area networks (WLAN)." While the sincerity of these attestations is not in question, they have apparently been solicited in preparation for the filing of the petition, and do not lend any weight to the petitioner's assertion that his work has had an impact on the field as a whole. Evidence that would have existed regardless of the petition's filing would more persuasively indicate that the petitioner has demonstrable prior achievements.

[REDACTED] a director of integrated circuit design at Silicon Wave, supervised the petitioner during the petitioner's summer internship at Rockwell Semiconductor Systems. [REDACTED] praises the petitioner's research skills as "first-rate" and predicts that the petitioner's work will have an "enormous impact on the technical leadership of the United States."

[REDACTED] of the University of California, Los Angeles collaborated with the petitioner during [REDACTED] stay at Stanford. [REDACTED] describes the petitioner's superior academic background, his work for the past three years in researching "state-of-the-art electronic circuits for wire-less communication links," and praises the petitioner's ability to raise a technical discussion to a higher level.

██████████ chief technology officer, and Sanjiv Ahuja, chief executive officer of Comstellar Technologies, also submit recommendations on the petitioner's behalf. Both individuals submit letters dated October 2000 and note that the petitioner's current work involving the development and commercialization of high efficiency linear power amplifiers and low power integrated circuits for wireless and portable systems has important implications for U.S. communications industries. Neither witness indicates how he is familiar with the petitioner, but both praise his talents and experience as far exceeding that of other scientists.

Most of the witness letters in the record are from the petitioner's supervisors, teachers, employers and colleagues. This does not detract from the validity of their opinions, as they are in the best position to evaluate the petitioner's qualities. However, the record would be more persuasive if it included evidence from independent authorities indicating that the application of petitioner's specific individual research in various aspects of wireless communications has actually been realized. Many of the letters summarize the petitioner's credentials and speak of the potential impact of the petitioner's work. General statements attesting to the future implications of the petitioner's research are insufficient to demonstrate eligibility for the national interest waiver.

In addition to the evidence discussed above, the record also contains copies of nine of the petitioner's published articles. When assessing the influence and impact that the petitioner's work has had, the act of publication is not as reliable a gauge as the citation history of the published works. Publication alone may establish originality, but it cannot be concluded that a published article is important or influential if there is little evidence that other independent researchers have relied upon the petitioner's findings. Similarly, frequent citation by independent researchers can be viewed as a more accurate indication that the petitioner's work has attracted widespread interest or authoritative recognition. Here, there is no evidence that any independent researchers had cited any of the petitioner's articles at the time the petitioner filed his petition. Further, the petitioner has presented no evidence that presentation or publication of one's work is unusual in the petitioner's field.

On appeal, the petitioner's counsel points to thirteen citations that the petitioner's work has received and submits copies of these articles. One of the articles is not dated, and the remaining articles were published well after the petition's filing date. As such, they do not establish the petitioner's reputation or influence on the field as a whole, as of the filing date of the petition. *Matter of Katigbak, supra.*

Although the record here indicates that the petitioner is an accomplished student, it does not establish that he has already influenced his field to any significant degree. The labor certification process exists because protecting jobs and employment opportunities of U.S. workers having the same objective minimum qualifications as an alien seeking employment is in the national interest. The alien seeking an exemption from this process must present a national benefit so great as to outweigh the national interest inherent in the labor certification process. In this case, the evidence fails to persuasively establish that the petitioner's proven record of achievements and influence over the field as a whole is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches itself to the visa classification sought by the petitioner.

As is clear from the plain wording of the statute, it is 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 the national interest. Similarly, 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. Based on 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.

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

ORDER: The appeal is dismissed.