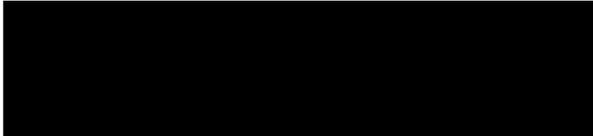


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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
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Washington, D.C. 20536

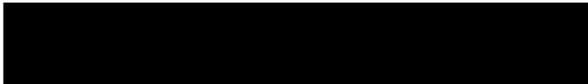


File: 

Office: CALIFORNIA SERVICE CENTER

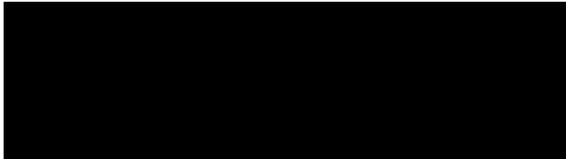
Date: MAR 28 2003

IN RE: Petitioner:  
Beneficiary:



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**

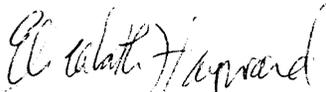
**INSTRUCTIONS:**

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 Bureau of Citizenship and Immigration Services (Bureau) 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 sustained and the petition will be approved.

The petitioner seeks to classify the beneficiary 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 is an aerospace engineering, manufacturing, and sales company that seeks to employ the beneficiary as a senior mechanical engineer. 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 beneficiary 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.

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) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements 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 director did not dispute that the beneficiary qualifies as a member of the professions holding an advanced degree. The sole issue in contention 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 the 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 the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

[The beneficiary's] extraordinary contributions to gear-driven Fly-By-Wire-based systems have irrefutably improved the safety of military and commercial aircraft throughout the United States.

The intrinsic merit of the beneficiary's field is readily apparent, and the beneficiary's occupation has national scope inasmuch as it affects aviation safety, manufacturing, and so on, and is not inherently limited to a small geographic area.

The petitioner submits several letters, both from its employees and from other witnesses. [REDACTED] the petitioner's general manager and vice president of Engineering, states that the beneficiary's "intelligent planning has resulted in tremendous cost savings for [the petitioner] and the entire U.S. gear manufacturing industry through standardized processes for quality control as well as multiple uses for the same tooling and fixtures," and that the beneficiary's "expertise has directly improved the quality and effectiveness of our products" for various aircraft applications. Other employees of the petitioning corporation assert that the beneficiary is a skilled and diligent engineer.

Beyond employees of the petitioning company, most of the remaining witnesses have collaborated with the beneficiary in some capacity. [REDACTED] who identifies himself as "a Manufacturers Representative for several high technology Cutting Tool Manufacturers," states:

[The beneficiary's] extraordinary talents became particularly clear to me when we were doing a joint project of PD 376 that [the petitioner] launched last year. [The beneficiary] was working with [REDACTED] a German Cutting Tool Company, and American Star Cutter Company to improve gear cutting tool design. The geometry and tolerance of aerospace parts are extremely tight, making it difficult to produce deep internal hex holes and close tolerance gear teeth without grinding. Nonetheless, [the beneficiary] was able to successfully design a new gear cutting tool which circumvented these problems. His design broke new ground in American engineering, since no American tooling company has ever made this kind of cutter before. As a result of his work, we are not only making better parts now, but have saved significantly on tooling costs.

[REDACTED] vice president and general manager of Redin Corporation, states that the beneficiary worked "on a challenging project to develop a special machine to deburr a large ring gear for both external and internal gear teeth in one step." [REDACTED] indicates that the new machine takes "10 minutes to finish a part with a diameter of 40 inches compared to a hand-deburrer which takes six hours." [REDACTED] manager of Gear Technology at Dodge, Rockwell Automation, states that the beneficiary "continues to be at the forefront of gear technology design, manufacturing and development." [REDACTED] adds:

Among his many accomplishments, [the beneficiary] successfully designed an innovative tooling process to create crucial parts such as the clutch gear and planetary ring gear. Furthermore, he developed gear tooth chamber and deburring

machines to reduce gear tooth contact stress. These innovative machines are critical in the reduction of the possibility of gear tooth failure. . . .

[The beneficiary's] contributions to his field go well beyond the projects he does for his employers. He has also given impressive and insightful talks at several leading industrial conferences.

The director requested further evidence that the petitioner has met the guidelines published in *Matter of New York State Dept. of Transportation*. In response, the petitioner has submitted a letter in which counsel argues that the initial submission addresses the director's concerns. The petitioner has also submitted two further witness letters. Professor [REDACTED] director of the Gear Dynamics and Gear Noise Research Laboratory at the Ohio State University, offers few substantive words about the beneficiary, but attests to the expertise of other witnesses of record and states that the initial letters demonstrate that the beneficiary "is an important member of [the petitioner's] highly successful engineering team." [REDACTED] lead design engineer in Stabilizer Trim Control Systems, Mechanical Flight Systems at Boeing Company, states that the beneficiary "has succeeded in revolutionizing gear production in some of the most demanding high technology industries throughout the United States. . . . Furthermore, his talent and expertise in gear production has been instrumental to the improvement of gear safety." Both of the above individuals have demonstrable expertise and standing in the beneficiary's field, and their letters show that the beneficiary is highly regarded both in industry and in academia.

The director denied the petition, stating that "the beneficiary's work experience in the field appears to be notable and commendable" but that the evidence offered falls short of establishing eligibility. Several passages in the director's decision refer to regulatory standards such as nationally recognized prizes and original contributions of major significance. These standards derive from 8 C.F.R. § 204.5(h)(3), which apply to a different immigrant classification (alien of extraordinary ability). Because the petitioner has not sought to classify the beneficiary as an alien of extraordinary ability, the petitioner's failure to meet the criteria listed at 8 C.F.R. § 204.5(h)(3) is irrelevant in this proceeding. The petitioner need not establish that the beneficiary is nationally acclaimed or recognized. The petitioner has succeeded in showing that the beneficiary's work is nationally significant. Such a finding does not require evidence that the beneficiary is acclaimed as a leader in his field, provided that the industry is actually implementing the beneficiary's designs and concepts.

The director states that many of the witnesses who have provided letters are the beneficiary's "professors, employers, former and current coworkers, [and] collaborators," and that "their knowledge of the beneficiary's work appears to derive from this association, rather than from the beneficiary's general acclaim." Some witnesses have minimal connections to the beneficiary. Also, we must consider the circumstances of the beneficiary's employment. The beneficiary is not a researcher who is expected to produce a significant volume of published research (by which his name would be disseminated throughout the field). Rather, he is an engineer who provides gear machinery to a high-profile clientele, and several witnesses have attested that the beneficiary's specialty is a rather narrow one, with only a small number of experts. Prof. Daniel Houser indicates that he knows of "only four universities in the US who had graduated more than

5 PhD's in the gearing field in the last 40 years." In this context, it is not surprising that many other experts in the specialty have had some contact with the beneficiary.

On appeal, counsel asserts that the director did not give due weight to the "testimony of leading authorities in [the] beneficiary's field." An official of Boeing Company, unquestionably a world leader in aerospace engineering, has stated that the beneficiary's work is "revolutionizing gear production." While Boeing has been a client of the petitioning corporation, and [REDACTED] has had some limited contact with the beneficiary, it is difficult to imagine a more authoritative source within the industry than a senior engineer at a leading aerospace company. On the academic front [REDACTED] heads one of the nation's major gear research laboratories. While advisory opinions from such sources do not automatically mandate the approval of a given petition, nevertheless they carry significant weight and bear serious consideration.

The petitioner submits, on appeal, further letters from individuals whom counsel describes as "leading authorities in the high tech gear industry." In general, these newest letters stress that the beneficiary is more experienced than most of his U.S. counterparts. This argument, by itself, is not particularly persuasive. Pursuant to 8 C.F.R. § 204.5(k)(3)(ii)(B), length of experience is one factor, among others, to be considered when judging a claim of exceptional ability. Exceptional ability, in turn, is not by itself grounds for a national interest waiver; the plain wording of the statute indicates that aliens of exceptional ability are generally subject to the job offer requirement. The assertion that experienced engineers are more beneficial than inexperienced ones is broad and general rather than a specific argument rooted in the special qualifications of this particular beneficiary. Notwithstanding the above, the new letters on appeal certainly do not undermine the more persuasive letters from earlier submissions. While the latest letters could have addressed pertinent issues more directly, the director's rather confusing reliance on inapplicable regulatory standards (that actually apply to an entirely different immigrant classification) did not provide the petitioner with clear guidance as to how the original materials were perceived to be insufficient.

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 endeavor, 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 within the beneficiary's specialty recognizes the significance of this beneficiary's work rather than simply the occupation in general. The benefit of retaining this alien's services outweighs the national interest that 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, 8 U.S.C. § 1361. The petitioner has sustained 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.