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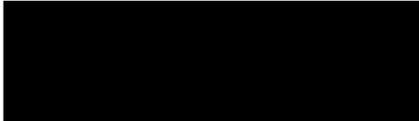
U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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**BS**

ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
BCIS, AAO, 20 Mass, 3/F  
Washington, D.C. 20536



File: WAC 02 132 54555 Office: CALIFORNIA SERVICE CENTER

Date:

**MAY 29 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:



**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 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 researcher in the field of electrical engineering. At the time of filing, the petitioner was a doctoral candidate at Arizona State University (ASU). 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 has 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 petitioner 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 regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now the Bureau] 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.

Counsel describes the petitioner’s work:

[The petitioner] has distinguished himself academically and professionally as a person with exceptional engineering expertise, which has resulted in several innovations in his field, which are of substantial interest to the U.S. regarding commercial and military communications as well as national security and public safety regarding weaponry detection at airports and other public transportation facilities. . . .

His exceptional ability lies in Radio Frequency (RF) solid-state circuits and active antenna array design and implementation. These technologies are applicable to the areas of wireless communication, RF power amplification, wireless link networking, and nanoelectronics engineering.

Currently, [the petitioner] is a Ph.D. candidate and Research Associate with the Department of Electrical Engineering at Arizona State University. As the principal investigator of this research, [the petitioner] has made significant achievements through the development of new techniques for the implementation of high frequency active antenna arrays using quantum devices. [The petitioner’s] work has already provided the first active antenna using such a device, which allows a higher operation frequency and more functionality than currently used devices.

This is pioneering research that has already had a tremendous impact on the field through conference presentations, workshops, seminars, etc. . . .

[The petitioner's] research results will introduce the *world's first* mutual locking array, which incorporates tunnel devices. This first of its kind in the world technology is of great significance to commercial and military communications as well as to national defense/national security and public safety. The technology being designed, developed, and implemented by [the petitioner] will use a millimeter wave passive image system to provide detailed visual images of concealed weapons and other objects in real time. . . .

Another use of the tunnel device technology lies in the new generation of computer CPU chip design. The new concept of faster switching with the tunnel devices will result in the development of higher speed computers, an ongoing challenge within the high technology industry.

(Emphasis in original.) Counsel states repeatedly that the petitioner's "research results will introduce the *world's first* mutual locking array," the use of the future tense signifying that the petitioner has not yet introduced a mutual locking array. Counsel does not explain how it is known for a fact that the petitioner's research will lead to a mutual locking array, or that other researchers will not introduce such an array before the petitioner does. In this way, counsel appears to hinge much of the petitioner's benefit to the U.S. on a device which, admittedly, had not yet been invented as of the time counsel made the above statements.

The petitioner submits several witness letters. Without exception, every initial witness is based in Tempe, Arizona, either at ASU where the petitioner was then studying, or at Motorola Labs where the petitioner had recently completed a summer internship. The letters, like counsel's summary, attribute great significance to the petitioner's work but include speculative assertions regarding the impact of that work. For example, Dr. [REDACTED] vice president and director of the Physical Sciences Research Laboratories at Motorola Labs, states that the petitioner has conducted "pioneering research that may influence the entire field of wireless communication." ASU Professor [REDACTED] states that the petitioner's "research results are very significant and should have a major impact on many applications beneficial to national competitiveness." With regard to national competitiveness, we note that the Japanese government has funded at least one of the petitioner's projects. The record does not indicate whether any patents arising from this work would be assigned to the foreign government that financed the research.

A number of the witnesses offer only general assessments of the petitioner's work. At least one witness has no apparent expertise in electronic engineering at all; [REDACTED] of International Students, Inc., identifies himself as a minister whose understanding of the petitioner's work derives primarily from what the petitioner himself has told him about it.

The petitioner submits copies of his scholarly writings and presentations. Counsel states that these materials establish the petitioner's impact on his field, but the record does not establish how the field has reacted to the petitioner's published and presented work. Its very existence does not demonstrate impact. The petitioner does not submit objective evidence of impact, such as documentation showing heavy independent citation of the petitioner's articles.

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 evidence that he received his doctorate on May 9, 2002, two months after the petition's March 11, 2002 filing date. The petitioner also shows that, on April 18, 2002, he accepted an employment offer from TDK Research and Development Corporation, Phoenix, Arizona, for the position of Senior RF Design Engineer. The job offer letter does not indicate whether the petitioner is to continue working on the projects that formed the foundation of his national interest waiver claim.

The petitioner submits a letter dated October 15, 2002, from another ASU faculty member, Professor [REDACTED] who chairs the Department of Electrical Engineering. Prof. [REDACTED] states:

[The petitioner] has developed the first active antenna array using the Hetero-junction Inter-band Tunnel Diode device, which achieves higher operation frequency and better function than using conventional tunnel diodes.

[The petitioner] is working on introducing the first functional mutual locking array, which incorporates these tunnel devices.

Prof. [REDACTED] thus indicates that, seven months after the filing of the petition, the petitioner's mutual locking array remained unrealized. Prof. [REDACTED] asserts that the petitioner's "work is widely recognized," but the record contains no objective evidence to show such recognition outside of the Phoenix/Tempe area.

The director denied the petition, acknowledging the intrinsic merit and national scope of the petitioner's work but finding that the petitioner's own contribution does not warrant a waiver of the job offer requirement that, by law, attaches to the classification that the petitioner chose to seek. The director's decision contains several references to criteria set forth at 8 C.F.R. § 204.5(h)(3). These criteria apply to a different visa classification, for aliens of extraordinary ability pursuant to section 203(b)(1)(A) of the Act. This analysis was in error. Nevertheless, the director's decision does not rely on these criteria to the exclusion of more appropriate criteria relating to the national interest waiver. The decision as a whole contains sufficient relevant findings to support the outcome of that decision. For instance, the director notes that the witnesses are tied to the petitioner's employers or to ASU, and that the petitioner's work is discussed in the context of what might eventually result from it, rather than from realized results.

On appeal, counsel offers a quotation from President George W. Bush's 2002 State of the Union address, stressing the importance of increased security. Counsel concludes from this excerpt that the petitioner's "area of research is of substantial national interest." The question at this point,

however, is not whether the “area of research” serves the national interest, but whether the petitioner’s individual contributions in that area distinguish him from colleagues in that field to an extent sufficient to qualify him for the additional benefit of a waiver of requirements that normally apply to professionals in that area of research.

The petitioner submits four new letters, which counsel deems to be “*independent* testimony [that] reflects that [the petitioner’s] work is indeed recognized by researchers nationally as a major contribution to the field.”

Dr. [REDACTED] electrical design director at Skyworks Solutions, Inc., discusses one of the petitioner’s conference presentations. Dr. [REDACTED] states that the “applications [proposed by the petitioner] are very promising, and may affect [the] entire wireless industry.” Dr. [REDACTED] does not specify whether any work that the petitioner has completed has already affected the industry in this way. Dr. [REDACTED] chief technical officer with Wavestream Wireless Technologies, offers the similar assessment that the petitioner’s “successful work completed might lead to new products.”

Dr. [REDACTED] senior technical staff and group leader at the Jet Propulsion Laboratory, states “I have followed Motorola’s research project on interband tunnel diodes with interest. . . . [The petitioner] has certainly made an important contribution to the field of quantum devices, and his work is outstanding and recognized by his peers in the field.” In discussing the nature of the petitioner’s impact on the field, however, Dr. [REDACTED] states only that the petitioner’s “device [is] a very good candidate for future wireless applications.”

Professor [REDACTED] of the University of California, Los Angeles, states that the petitioner “has involved [sic] in a long-term collaboration research project funded by Japanese Ministry of International Technology and Industry through Motorola, Inc.” Prof. [REDACTED] does not indicate whether the petitioner, now working for TDK, is still involved in the Motorola project. The petitioner’s involvement with this “long-term collaboration” appears to be limited to two summer internships. Prof. [REDACTED] like the other witnesses, offers no indication that the petitioner’s innovations are yet in use; he states that the petitioner’s “prototype results . . . are believed to be very promising for these devices to be used in future wireless industry.” All four witness letters follow the pattern set by previous letters, indicating that the petitioner’s work may eventually prove useful in devices that have yet to be invented.

Additional writings by the petitioner, submitted on appeal, demonstrate the petitioner’s continued activity in the field, but the petitioner has not shown widespread implementation of his work, discussion of his findings at the numerous conferences he attends, or citation of his published work.

The importance of electronics, wireless transmission, or security applications of such technology is not in question here. Nevertheless, simply working in that field does not presumptively qualify an alien for a waiver. The petitioner has not established that his work has already had significant

impact in his field; he has only shown that witnesses (whom he has selected) believe that it may have such impact at some point in the future as new devices are invented.

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.

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 not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

**ORDER:** The appeal is dismissed.