



U.S. Citizenship
and Immigration
Services

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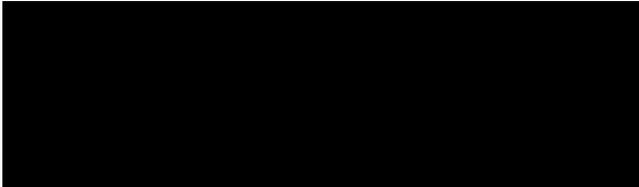


FILE: WAC-99-238-52728 Office: CALIFORNIA SERVICE CENTER Date: APR 27 2004

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)

ON BEHALF OF PETITIONER:

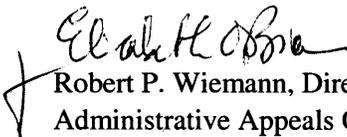


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invasion of personal privacy**

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.


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 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 an alien of exceptional ability. The petitioner seeks to employ the beneficiary as a software performances evaluation 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 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 briefly argues that the director ignored two pieces of evidence and asserts that he will submit a brief and/or evidence to this office within 30 days. Counsel dated the appeal March 9, 2001. As of this date, more than three years later, this office has received nothing further. The appeal will be adjudicated on the evidence of record.

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 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 to classify the beneficiary as an alien of exceptional ability. This issue is moot, however, because the record establishes that the beneficiary holds a Ph.D. in Mechanical Engineering from Stanford University. The beneficiary's occupation falls within the pertinent regulatory definition of a profession. The beneficiary 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 the 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 Dep't. of Transp., 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 did not contest that the beneficiary works in an area of intrinsic merit, robotics research and Java software development, or that the proposed benefits of his work, improved software performance, would be national in scope. The issue before us, then, is to determine whether the beneficiary 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 beneficiary's contributions in the field are of such unusual significance that the beneficiary 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 the alien's past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

The director concluded that the letters were mostly from collaborators and the more independent letters provided only general praise of the beneficiary's abilities. On appeal, counsel asserts that the director failed to accord the reference letters the proper evidentiary weight. Counsel notes that the petitioner submitted letters from Oak Ridge Laboratory and the Institute of Electrical and Electronic Engineers (IEEE).

The beneficiary obtained his Master's degree and Ph.D. from Stanford University. From 1993 to 1996, he worked as a postdoctoral research associate for Oak Ridge National Laboratory. At the time of filing, the beneficiary was working for the petitioning company as a performance engineer. In this capacity, he performed consulting services for Sun Microsystems' Java Software Division.

Professor Jean-Claude Latombe, the beneficiary's principal doctoral advisor at Stanford, asserts that the beneficiary's work on robotic fine motion planning substantially advanced the results of his predecessors. Dr. Oussama Khatib, an associate professor at Stanford, asserts that he co-authored articles with the beneficiary at Stanford. Dr. Khatib states that the beneficiary "developed an algorithm to estimate the pose of grasped objects" and that this algorithm was "implemented on a PUMA 560 arm." Dr. Khatib concludes that the beneficiary's work "provided one of the first experimental validation of advanced force control system." Associate Professor Joel Burdick, a former research assistant in the same laboratory as the beneficiary at Stanford, adds that the beneficiary "extended a three (translations) force feedback control system to a full six-degree of freedom system."

François G. Pin, Chief Scientist for Robotics at Oak Ridge National Laboratory, discusses the beneficiary's work in the Autonomous Robotic Systems Group and the Robotics and Process Systems Division. According to Mr. Pin, the beneficiary ported a networked communication system, HELIX, to a "VxWorks real-time operating system environment." The beneficiary also "showed that dead reckoning, the simplest of the methods in ascertaining the position of a mobile robot, is subject to errors."

Anil Khatri, president of the petitioning company and the beneficiary's undergraduate classmate, discusses the beneficiary's consulting for Sun Microsystems. At the petitioning company, the beneficiary was the lead engineer consulting with Sun Microsystems, "working in the area of performance engineering for software optimization with an emphasis on motion planning and computer graphics." The beneficiary was responsible for the design and implementation of software to monitor and analyze system and software package performance and providing recommendations to improve Windows NT, database and Java-based computer systems. Based on the beneficiary's work, Sun Microsystems incorporated "a run-time option to reduce additional check in the native interface" and generally improved the performance of its Java-based systems. These contributions are confirmed by Mala Chandra, Director of Java Platform for Enterprise at Sun Microsystems.

In response to the director's request for additional documentation, the petitioner submitted a letter from William Hamel, a fellow of the IEEE who also works at Oak Ridge Laboratory. Mr. Hamel explains that the beneficiary's implementation of a full six-degree of freedom force-control manipulator was the first such implementation in a laboratory. Finally, Mr. Hamel praises the beneficiary's porting of HELIX and concludes that the beneficiary is a "superb young scientist who is an important contributor in the field of robotics."

Pradeep Khosla, a professor at Carnegie Mellon University who viewed the beneficiary's presentation at Stanford, asserts that the beneficiary's accomplishments include the performance and optimization work for Sun Microsystems, his published articles, and his unique expertise and experience.

Finally, two additional letters from high-level staff at Sun Microsystems attest to the importance of the beneficiary's optimization work on their software programs, noting the wide licensing and use of these programs. While the programs may be widely used, it does not follow that the individual who performed the optimization of the programs has himself influenced the field as a whole.

With the exception of Professor Khosla, the beneficiary's references all have a connection to the beneficiary. While these letters are important in establishing the role he played on various projects, they have less value as evidence of the beneficiary's influence beyond his circle of colleagues. Professor Khosla provides no examples of how the petitioner has influenced the field. Objective evidence supporting the letters is lacking. For example, the beneficiary lists three journal articles and eight conference presentations on his resume. Several of his references assert that these articles and presentations have been cited internationally. The record, however, contains no evidence of citation such as a printout from a citation index service. In fact, the record does not even contain the journal articles themselves (or the first page of each article).

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.