

U.S. Department of Homeland Security

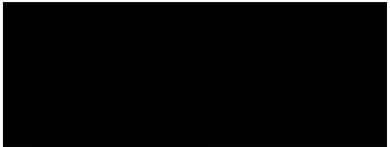
Citizenship and Immigration Services

**PUBLIC COPY**

B5

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

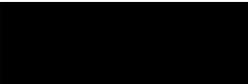
ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 Eye Street N.W.  
Washington, D.C. 20536



File: [Redacted] Office: CALIFORNIA SERVICE CENTER

Date: JAN 22 2004

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 Citizenship and Immigration Services (CIS) 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 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 senior optical engineer at Ondax, Inc. 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.

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 the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now CIS] 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 petitioner describes himself as “a well-recognized scientist on holographics,” and discusses his research endeavors:

My researches on holographic application have been concentrated on three major technologies:

1. Holographic data storage, which is the most promising technique for next generation high-end data storage for supercomputer and multi-media database. Sponsored by the NASA HTMT project, my research on the holographic resolution has addressed the basic performance of holographic memory system and recorded the smallest holographic feature. Applying phase conjugate technique, I have reduced the holographic memory system size, decreased its cost, and shown its potential for commercialization.
2. Holographic hyperspectral imaging. I, with my colleagues in Caltech and MIT have proposed and demonstrated this innovative technology for imaging 3D spatial and spectral information. My work demonstrated the first real-time 3D spatial and spectral imaging technology by holographics. This technology will be of significant benefits for biomedical research, security surveillance, military target detection and counter-camouflage. A pattern application based on this original research is in progress.

3. High-speed fiber optics network components. As a leading manufacturer of tunable components for next generation DWDM optical networks, Ondax, Inc. has been developing dynamic tunable optical filters and dispersion compensators. My expertise in holographics, including experimental research and theoretical simulation have improved the product performance and opened new areas for novel product development.

The petitioner submits job offer letters from Ondax and three other prospective employers, demonstrating that securing a job offer would pose no problem for the petitioner. The ready availability of multiple job offers does not, on its face, represent a strong argument in favor of waiving the job offer requirement.

The petitioner submits letters from several witnesses. Professor Demetri Psaltis, who supervised the petitioner's doctoral studies at the California Institute of Technology (Caltech), states that the petitioner "has demonstrated himself as one of the best students in my career." Among the petitioner's accomplishments, Prof. Psaltis states that the petitioner was able to demonstrate the potential for a recording density "100 times higher than currently achieved DVD data storage density." Prof. Psaltis states that the petitioner's "contribution was virtually indispensable for the success of the [multi-spectral imaging] project."

All but one of the other witnesses worked with the petitioner and/or his mentor, Prof. Psaltis, at Caltech. They generally praise the petitioner's work and attest to the importance of the innovations described above. The remaining witness is Dr. Christophe Moser, president and CEO of Ondax, who states that the petitioner "has risen to the top of his field" and that the petitioner's innovations "open the new possibility for applying holographic technology into practical commercial products." Dr. Moser asserts that the petitioner "has authored more than a dozen publications," but the record does not reflect the citation record of those published works. The initial submission does not establish how the field, apart from the petitioner's own instructors and collaborators, has reacted to his work.

The director requested additional evidence to establish that the petitioner meets the guidelines published in *Matter of New York State Dept. of Transportation*. In response, the petitioner submits further letters. Many of these letters are from the initial witnesses, such as Prof. Psaltis, and some of these letters are very similar to the initial letters. Other letters, however, are from more independent witnesses whose knowledge of the petitioner's work comes from review of his published and presented work.

Dr. John Hong, chief technologist for the Astronomy and Physics Directorate at the Jet Propulsion Laboratory, states:

My recommendation letter is based entirely on a careful review of [the petitioner's] research output as compiled in his publications. I am not a personal friend of [the petitioner]. . . .

[The petitioner's] achievement on holographic memory is at the leading edge of technology development with potential payoff in both commercial and government applications that require ultra high storage densities. . . . The incorporation of two important component technologies, vertical cavity lasers and phase conjugate readout are key contributions that [the petitioner] has made among his work on optical data storage. . . . He has, from what I see, made fundamental contributions to the development of filters that are critical to the deployment of dense wavelength division multiplexing systems – the next generation high-speed optical network.

Hans Coufal, manager of Science and Technology at IBM's Almaden Research Center, states that he "became intimately familiar with [the petitioner's] scientific achievements through his publications . . . and presentations." He offers the "professional opinion that the contributions made and being made by [the petitioner] substantially exceed those being made ordinarily by qualified professionals in his field." Dr. W. Matthew Michael, assistant professor at Harvard University, is a specialist in molecular biology rather than optics and thus he focuses on the biomedical applications of the petitioner's work. Dr. Michael states:

[The petitioner] developed the new multi-dimension hyperspectral imaging technology, which is capable of collecting 3D spatial information and spectral information of medical samples simultaneously. This new technology can significantly revolutionize biomedical research, and it has direct implications for the development of therapeutics to be used in the treatment of human disease. In biomedical research, it is crucial to determine with high resolution the sub-cellular localization of a protein or macromolecule of interest. . . . Furthermore, sophisticated biomedical imaging techniques are necessary to collect spatial information of certain targets, for instance, the size and the position of a tumor, or the abnormality of a structure within the brain. Current 3D spectral imaging . . . is too slow for observing the structural dynamics of cellular components within living cells. [The petitioner] has build an experimental system where, for the first time, it may be feasible to achieve real-time 3-D spectral imaging in living cells. . . .

[The petitioner] has made significant contributions to biomedical science in the area of 3D hyperspectral imaging technology. His achievements have tremendous impact for biomedical research, for industrial drug development, and for the improvement of human health.

The director denied the petition, stating that the witnesses' "letters are strong yet fail to set the self-petitioner apart from any other Senior Optical Engineer serving the national interest at a higher level. His contributions are significant at best." The director concluded that "[t]he supporting letters appear to be from former or current academic colleagues in the self-petitioner's field." The director determined that the petitioner's claim of eligibility is "based on the general premise that the self-petitioner's contributions . . . will benefit the United States."

On appeal, counsel argues that the director did not give sufficient consideration to the witness letters. Counsel states that a witness' expertise is not diminished by a professional relationship with the petitioner. The issue, however, is not the expertise of the witnesses. If an alien's findings are known only to his own collaborators and superiors, it becomes difficult to argue that those findings are especially significant within the field. Therefore, independent evidence, whether in the form of third-party letters, heavy citation of articles, or some other form, is valuable as a means to determine that the alien's work has attracted significant attention that is not contingent on preexisting relationships with the petitioner.

That being said, the petitioner has submitted independent statements, which the director appears to have overlooked when considering the evidence. Upon consideration, the totality of the record supports the finding that the petitioner's work has attracted attention in a number of disciplines that are affected by his work in optics. The witnesses include experts at several top universities throughout the United States, and are not limited to the petitioner's collaborators or close colleagues.

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 research, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes that the scientific community recognizes the significance of this petitioner's research rather than simply the general area of research. 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.