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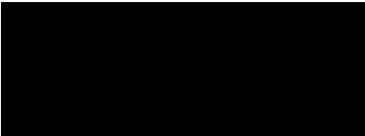
U.S. Department of Homeland Security

Citizenship and Immigration Services

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**B5**

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



File: LIN 02 230 51068 Office: NEBRASKA 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:



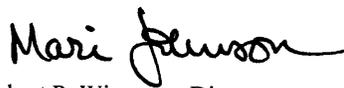
**INSTRUCTIONS:**

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.

  
for Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska 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 mechanical engineer at Harris Corporation. 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 states that his “research focuses on thermal science, heat transfer, and advanced electronics cooling, especially in aerospace and aeronautics applications, and broadcast industry.” The petitioner observes that cooling technology is necessary in the above applications, but many existing methods are either expensive, impractical, inefficient, or environmentally hazardous.

The petitioner describes some of his past projects, including “[a]n investigation on a cooling device named capillary-pumped loop (CPL) in the support of NASA’s Microgravity Sciences Directorate . . . and development of an experiment on space shuttle *Columbia*,” “[e]stablishment of a fundamental theory for electrohydrodynamically enhanced flow and heat transfer,” and “development of innovative cooling systems for advanced digital TV and radio transmitters.” The petitioner then discusses technical details of these projects.

The petitioner’s own assessment of the importance of his work, of course, carries no weight as objective evidence. The petitioner therefore submits several witness letters. Most of these witnesses have taught or collaborated with the petitioner, but some of the witnesses appear to be largely independent. Dr. David M. Pratt, technical advisor for the Structures Division, Air Vehicles Directorate, Air Force Research Laboratory, asserts that his “knowledge of [the petitioner] is based on his reputation in aeronautics application and electronics cooling.” Dr. Pratt discusses the significance of some of the petitioner’s contributions:

[The petitioner] presented his research work 'Experimental and Analytical Studies of the Maximum Heat Transport Capacity in electrohydrodynamically enhanced Micro Heat Pipes' in my session [at a 2000 conference]. I was also one of the reviewers of this paper. I was captured by his incredible invention. Micro heat pipe technique is a promising cooling device in aeronautic and airspace application because [of] its high efficient capability of heat transport and it does not need an extra energy [source]. However, the capillary limitation limits its heat transport capability. [The petitioner] invented a new device applying an electric field to a micro heat pipe array as a high power cooling device. His invention significantly increased the heat transport capability which could be applicable to future aerospace vehicles. . . .

[A]nother extraordinary contribution to electrohydrodynamic phenomena is that he established a fundamental theory for the electrohydrodynamic heat transfer. . . . [The petitioner's] theory not only explains the mechanisms of electrohydrodynamically augmented heat transfer, but provides a foundation for the interaction between electric field and fluids as well. [The petitioner's] theory is now employed to fabricate biologic electronic chips at Air Force Research Laboratory. Biologic chips will be used to make electronic transistors and may change the electronics world.

Dr. Shuqun Zhang, assistant professor at the State University of New York, Binghamton, states:

[The petitioner's] research in electronics cooling is a breakthrough for future electronic industry. As far as I know, he is the first researcher in the world to apply an electric field to micro heat pipes. This breakthrough dramatically augments the cooling capacity of the device and gives the electronic industry a wide space to develop high power and density electronic devices, such as high-speed microprocessors, high power amplifiers, etc.

The director instructed the petitioner to submit evidence to show that the petition meets the guidelines published in *Matter of New York State Dept. of Transportation*. On appeal, counsel has stated "[t]he petitioner does not just work in the field, but he actually established a fundamental theory of electrohydrodynamically enhanced flow and heat transfer. . . . The fact that he came up with a fundamental theory . . . has a monumental influence on the field." This last statement appears to be somewhat exaggerated, but then an alien's contribution need not be "monumental" to warrant a national interest waiver.

The petitioner submits additional letters. Dr. Quinn H. Leland (who completed his Ph.D. at Dayton University the year before the petitioner arrived there) is lead engineer of Large Military Heat Transfer and Fluid Systems Design at General Electric Aircraft Engines. Dr. Leland states that the petitioner's "most outstanding scientific research accomplishment, I believe, is the

incorporation of active temperature control into micro heat pipes,” which has “opened a new application field for heat pipes.”

The director denied the petition, acknowledging the intrinsic merit and national scope of the petitioner’s occupation but finding that the evidence falls short of establishing the significance of the petitioner’s own contributions to the field. The director acknowledged that the petitioner “has a degree of recognition amongst others outside of his immediate circle of collaborators,” but the director observed that the record lacks evidence showing that the petitioner’s work at Harris Corporation has been published or “successfully commercialized.” The director questioned the degree of credit the petitioner has received for his most significant projects, and the director stated that there is no evidence that the petitioner’s published articles have been heavily cited. Heavy citation would be a reliable objective indicator of the petitioner’s influence on the field.

On appeal, the petitioner submits a personal statement as well as a statement from counsel. Counsel’s statement repeats, verbatim, almost all of counsel’s earlier letter submitted in response to the director’s earlier request for evidence. The only new material in the appeal statement is an introductory sentence referring to the denial, and a closing paragraph which reads, in full:

Also, it is significant that the petition filed by Harris Corporation – Broadcast Division on behalf of the petitioner in this case, LIN0225350522, shows that the beneficiary/petitioner as an Outstanding Researcher was approved by this same office on May 20, 2003. A copy of the approved petition is enclosed. It would certainly be hard to sustain the denial of a petition in a lower category when the petition in the higher category of Outstanding Researcher was approved.

Counsel offers no persuasive explanation as to why the approval of another visa petition on the alien’s behalf establishes that the present petition should also have been approved. The approved petition was in another classification, with different eligibility standards that do not intrinsically imply eligibility for a national interest waiver. The petitioner himself observes that other institutions “want me to do research for them,” but this is difficult under visa classifications that require a specific job offer. The petitioner’s desire for flexibility is not, in itself, a strong argument for the national interest waiver, but it does at least provide some explanation for the petitioner’s continued interest in the current proceeding when he is already the beneficiary of another approved petition.

Unlike counsel’s appeal statement, the petitioner’s own statement on appeal addresses specific points raised in the denial notice. The petitioner observes that he was the first-credited author of several key scientific papers, which indicates that he was the major contributor to the projects discussed in the articles. The petitioner’s collaborators and supervisors have likewise attested that the petitioner was effectively the principal researcher on the projects.

With regard to the director’s assertion that the petitioner has not shown that his work at Harris Corporation has been “successfully commercialized,” witnesses from that company have previously noted that the petitioner began working for that company only a short time before the

petition was filed. Zhiqun Hu, principal engineer at Harris Corporation, has stated “[i]n his brief time with our department, he has already successfully established a liquid cooling system for a completely new digital TV transmitter and developed an analytical model to estimate junction temperatures of electronic devices.” Witnesses at the company credit the petitioner with “breakthrough” research that has advanced the technology used there.

The petitioner does not address the issue of citations. Nevertheless, while heavy citation of published work would be persuasive evidence, it is not universally mandatory in every national interest waiver case involving published researchers. A researcher can show influence on the field in other ways, including statements from independent witnesses, such as those that the director has acknowledged in this proceeding. Also, statements from an alien’s close associates, while they cannot directly establish wider influence, should not be arbitrarily dismissed out of hand because these witnesses have the most detailed knowledge of the alien researcher’s activities. In general, one must consider the totality of the evidence, rather than drawing positive or negative conclusions from a selective reading of isolated elements.

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 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.