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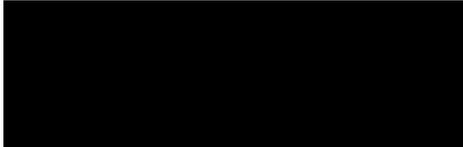
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U.S. Citizenship
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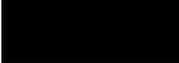


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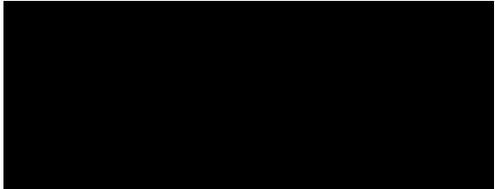
Office: NEBRASKA SERVICE CENTER

Date:

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 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

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 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. At the time of filing, the petitioner was working as a research and development software engineer for SRI International. 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) Subject to clause (ii), 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 petitioner holds a Ph.D. in Computer Science from Nanjing University in China. The director found 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 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 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.

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 petitioner’s contributions in the field are of such unusual significance that he merits the special benefit of a national interest waiver, over and above the visa classification sought. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at note 6.

In a letter accompanying the petition, counsel states:

[The petitioner] is making numerous contributions to the national interest in the field of information technology. Presently, he is employed by SRI International where he is actively involved in numerous research projects for various government agencies, particularly the Department of Defense. Among the significant research and development works related to DOD and non-DOD government projects in which [the petitioner] has been involved are included [sic] providing analyses, advanced system engineering, system design, and system development. Presently, he is involved in a vital research project entitled “Integration of Real and Virtual Combat Vehicles for Embedded [sic] Simulation,” a research project which supports the U.S. Army Simulation, Training, and Instruction Command’s Intervehicle Embedded Simulation and Training Program. He is also playing a key role in a research program on “Information Dissemination Management” which is expected to provide advanced technology for future SUO 341 (Army Small Unit Operation) systems.

As stated previously, playing an important role in a research project is not sufficient to demonstrate eligibility for a national interest waiver. Pursuant to *Matter of New York State Dept. of Transportation*, *supra*, the petitioner show that his individual accomplishments are of such an unusual significance that he merits a waiver of the labor certification process. By law, advanced degree professionals and aliens of exceptional ability are generally required to have a job offer and a labor certification. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d 1289, 1295 (5th Cir. 1987).

Congress plainly intends the national interest waiver to be the exception rather than the rule. Beyond establishing his eligibility for the underlying visa classification, the petitioner must also demonstrate that his work has had a significant impact on the U.S. defense industry in general or the field of information technology as a whole.

Along with evidence of his published and presented work, the petitioner initially submitted several witness letters in support of the petition.

Darrell Fowler, Assistant Director, Information Systems-Engineering Center, SRI Corporation, states:

[The petitioner] was chosen for his design and development role in [SRI's various DOD projects] because of his excellent technical background in computer technology applicable to these systems. His background knowledge and research skills, as well as experience, in the area of distributed processing, network communication, operation research and performance optimization, coupled with creativity, are extremely important in conducting this work.

Objective qualifications, such as those described in Darrell Fowler's letter, are amenable to the labor certification process. Pursuant to *Matter of New York State Dept. of Transportation, supra*, an alien cannot demonstrate eligibility for the national interest waiver simply by establishing a certain level of training or education that could be articulated on an application for a labor certification.

Darrell Fowler further states:

[The petitioner] has applied his industrious effort, experiences and expertise to achieve many milestones for our projects. For example, he only required two weeks to finish the set up of the ISAL (Information Systems Application Laboratory), the installation/testing of DOD's High Level Architecture RTI (Run Time Infrastructure) and related simulators which supports [our] projects...

Cregg Cowan, Senior Computer Scientist, SRI International, states that the petitioner "has a vital role" within SRI. He further states: "In the [United States Postal Service] and other DOD projects that he has joined, his expertise in the frontier technology of computer networks has made him invaluable. He actively participates in assigned projects and completes them with great accuracy. He consistently meets or exceeds the requirements in a timely manner." The petitioner may have benefited various projects undertaken by SRI Corporation, but his ability to impact the greater field beyond his company's projects has not been demonstrated.

David Martin, Computer Scientist, Artificial Intelligence Center, SRI Corporation, states: "[The petitioner] has done some very significant work, having published almost 20 research papers, some of which have been published in the journal *ACM Operating System Review*. Others have been submitted to *Institute of Electrical and Electronics Engineers (IEEE) Computer* and some other related international conferences." The record, however, contains no evidence that the presentation or publication of one's work is unusual in the petitioner's field, nor does the record sufficiently demonstrate that independent researchers have heavily cited or relied upon the petitioner's work in their research.

Slavko Galuga, Research Engineer, SRI International, states:

I have known [the petitioner] from the time he joined SRI's R&D staff earlier this year, and have worked closely with [him] on the combat vehicle simulation project. Although the effort is in its infancy, it is already apparent that the [the petitioner's] background and unusual combination of skills will contribute greatly to the success of this project.... [The petitioner] has quickly learned the fundamentals of HLA (High Level Architecture), soon to be the standard infrastructure for DOD simulations. This, coupled with his already impressive skills and ability to work well with others, guarantees him a significant number of projects to which he can make contributions.

In the same manner as Slavko Galuga, many witnesses discuss what may, might, or could one day result from the petitioner's work, rather than how the petitioner's past efforts have already had a discernable impact beyond the original contributions normally expected of a capable computer engineer or doctoral student.

Zhongxiu Sun, Professor, Department of Computer Science and Engineering, states:

I was [the petitioner's] Ph.D. degree academic advisor. I have to say that he was one of my best students ever. During his Ph.D. study, he published 12 research papers in the High Performance Distributed/Parallel Computing field. He proposed a new distributed computing model to overcome the limitations of the traditional Client/Server model, creatively designed a high performance algorithm for distributed group communication.... He performed such significant research work that two of his papers were published in the ACM Operating System Review and four were published in the top journals for computer science in China...

Publication, by itself, is not a strong indication of impact, because the act of publishing an article does not compel others to read it or absorb its influence. Yet publication can nevertheless provide a very persuasive and credible avenue for establishing outside reaction to the petitioner's work. If a given article in a prestigious journal (such as the *Proceedings of the National Academy of Sciences of the U.S.A.*) attracts the attention of other researchers, those researchers will cite the source article in their own published work, in much the same way that the petitioner himself has cited sources in his own articles. Numerous independent citations would provide firm evidence that other researchers have been influenced by the petitioner's work. Their citation of the petitioner's work demonstrates their familiarity with it. If, on the other hand, there are few or no citations of an alien's work, suggesting that that work has gone largely unnoticed by the larger research community, then it is reasonable to question how widely that alien's work is viewed as being noteworthy. It is also reasonable to question how much impact — and national benefit — a researcher's work would have, if that research does not influence the direction of future research. In this case, the petitioner has offered no evidence demonstrating heavy independent citation of his published articles.

Y. Annie Liu, Assistant Professor in the Computer Science Department at Indiana University, where the petitioner worked as a research assistant from May 1997 to March 1998, states that the petitioner was "one of the most talented students in [her] department." University study is not a field of endeavor, but, rather, training for future employment in a field of endeavor. The petitioner's scholastic achievement may place him among the top students at a particular educational institution, but it offers no meaningful comparison between the petitioner and experienced professionals in the computer engineering field who have long since completed their educational training. Dr. Liu further states that the petitioner "has published/submitted almost 20 research papers. Because of his excellent background, [the petitioner] joined SRI Institute this year, taking part in several Department of Defense projects."

We note here that the above witnesses consist entirely of individuals with direct ties to the petitioner. Beyond demonstrating that the petitioner has played a valuable role on various research projects, there is no evidence to show that the greater field views the petitioner's individual work as particularly significant. The petitioner must demonstrate not only that he is a particularly well-qualified research and development software engineer, but that his work has had a national impact beyond the scope of duties intrinsic to his profession. In this case, the general message of the letters seems to be that because his current employer requires trained professionals to provide expertise in computer technology, the petitioner serves the national interest by virtue of possessing the required training and skills.

The director requested further evidence that the petitioner had met the guidelines published in *Matter of New York State Department of Transportation*. In response, the petitioner submitted additional witness letters and further evidence of his published and presented work.

Benjamin Tang, founder and Chief Executive Officer, of MobileBest, Inc., a wireless computing company located in San Jose, California, states:

[The petitioner] has successfully designed a framework for analyzing and deploying multi-server fault tolerant systems that meet...stringent design objectives. For example, he proposed a Casual Order algorithm to solve the system failure problem and thus improve system performance for a large distributed network system. Another remarkable highlight demonstrated in his research results is that his solution to the problem has leveraged already existing technology to realize his proposed solutions. Furthermore, his solutions conformed to the established industry standards that make implementation using off-the-shelf components feasible. The model and proposed algorithm shows how...multi-server distributed systems can be used to solve mission critical requirements. A major achievement of the multi-server system that he has proposed is the extendibility to heterogeneous networks.

Dr. Yong Lee, Research Scientist, IBM Watson Research Center, states:

[The petitioner] focuses on solving problems of guaranteeing mission-critical systems to meet their fault tolerance requirement across high-speed networks.... Specifically, he has successfully demonstrated Parallel Ordering Algorithm [sic] that ensure network efficiency, as well as guarantee the message delay bounds in connection oriented networks. He creatively proposed a Fault-Tolerant Multi-Server Computing Model to systematically remove the performance bottleneck and the single point of failure in the traditional distributed systems. These models can be adopted in many U.S. defense system applications in network design, for example the DARPA [Defense Advanced Research Projects Agency] Small Unit Operation program. His work directly helps U.S. military and industry to achieve more network efficiency and fault-tolerance, while guaranteeing the system's Quality of Service (QoS).

In his second letter, Slavko Galuga describes the petitioner's most recent work during Phase II of the Small Unit Operations Program. Slavko Galugas discussion relates to events and accomplishments that came into existence subsequent to the petition's filing date. See *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Immigration and Naturalization Service (legacy INS) held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. New circumstances that did not exist as of the filing date cannot retroactively establish eligibility as of that date.

Ken Yi, Senior Research and Development Staff Member, Motorola, Inc., states:

Moreover, because my group in Motorola has been trying to build a next generation fault-tolerant networking system, we collected several research papers published related to this topic, especially those by [the petitioner]. The fault-tolerance model proposed by [the petitioner] provided my group with significant assistance. For example, the Concurrent Casual Order Algorithm published in his research paper significantly improves the network system's reliability and performance. [The petitioner's] algorithm can significantly remove any unnecessary network traffic delays caused by network traffic congestion.

Also provided was a "Small Unit Operations Team Award" presented by SRI Corporation to the petitioner in 1999. This evidence came into existence subsequent to the petition's filing date. *See Matter of Katigbak, supra.* While this award reflects recognition by the petitioner's employer, it does not show that his individual work is viewed throughout the greater field as being unusually significant. We further note that recognition by one's peers relates to the criteria for classification as an alien of exceptional ability, a classification that normally requires an approved labor certification. We cannot conclude that meeting one, two, or even the requisite three criteria for this classification warrants a waiver of the labor certification requirement in the national interest.

The director denied the petition, stating that the petitioner failed to establish that a waiver of the requirement of an approved labor certification would be in the national interest of the United States. The director stated: "While the record indicates that the alien petitioner is a productive computer engineer, the record does not establish that the contributions of the alien petitioner are such that they measurably exceed those of his peers at this time."

On appeal, counsel states: "The [director's] decision was contrary to the weight of the evidence as documentation was provided establishing that the petitioner met all three (3) prongs of the Matter of New York State Department of Transportation test..." Counsel further states: "While the petitioner may not have published extensively in the United States, one must look to the reason. In this case, he is working on projects for the Department of Defense's central research and development organization as well as for other Department of Defense agencies. The nature of his work is critical to U.S. defense interests and, as such, cannot be readily disseminated." The record, however, contains no letters of support from officials at the Department of Defense, the U.S. military, or any other federal agency, attesting to the petitioner's individual importance to the national interest. Counsel's argument is less than probative in demonstrating the petitioner's individual impact on the national interest.

Clearly, the petitioner's colleagues have a high opinion of the petitioner and his work, as do individuals such as Benjamin Tang and Dr. Yi, who know the petitioner from encounters at professional conferences. The petitioner's research findings and technological advances, however, do not appear to have yet had a significant influence in the larger field. The petitioner's work has added to the overall body of knowledge in his field, but this is the goal of all such research; the assertion that the petitioner's findings offer incremental improvements over existing system capabilities, or may eventually have practical applications, does not persuasively distinguish the petitioner from other competent research and development software engineers. That the petitioner played a role in improving existing computer information technologies demonstrates only that he performed the job expected of him in his capacity as research and development software engineer. Beyond showing that a few of his solutions were successful on various projects, the petitioner must also show

that petitioner's individual work is viewed throughout the greater information technology field or defense industry as particularly significant.

For the reasons set forth above, the petitioner has not established that his past accomplishments set him significantly above his peers such that a national interest waiver would be warranted. While the petitioner has plainly earned the respect and admiration of his coworkers, professors, and individuals he met at IEEE conferences, it appears premature to conclude that the petitioner's work has had and will continue to have a nationally significant impact. In sum, the available evidence does not establish that the petitioner's past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner.

CIS records now indicate that the petitioner is the beneficiary of both an approved labor certification and an approved employment based immigrant visa petition filed in his behalf by Netscreen Technologies, Inc. (WAC 01 246 52283). The question necessarily arises as to why a national interest waiver would be necessary to waive a job offer requirement that has already been met.

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 the 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 project or occupation, 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.

ORDER: The appeal is dismissed.