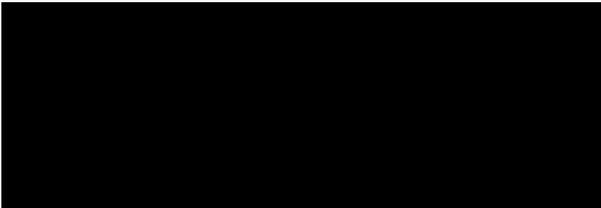


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U.S. Department of Homeland Security  
20 Mass. Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536

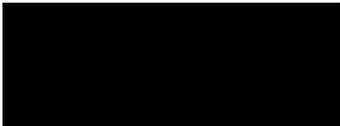


U.S. Citizenship  
and Immigration  
Services



FILE: EAC-00-160-51686 Office: VERMONT SERVICE CENTER Date:

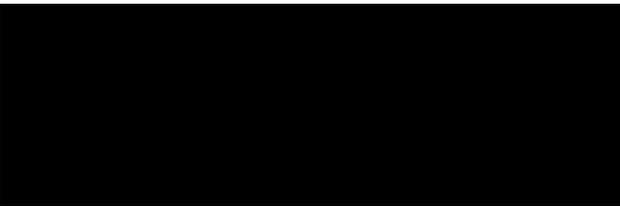
IN RE: Petitioner:  
Beneficiary:



MAR 31 2004

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.

*Mari Johnson*

Robert P. Wiemann, Director  
Administrative Appeals Office

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

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted, the previous decision of the AAO will be affirmed and the petition will be denied.

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 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 sole issue in contention is 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.

The petitioner has an educational background in chemistry, business and engineering. In the late 1980's, the petitioner published two articles on the thermal behavior of pitches. In 1989, the petitioner won a science award from the French National Academy of Metz. After that time, however, the petitioner worked as a software engineer, database manager, information system manager, and consulting engineer. All of these positions appear to be in the field of information technology. During that time, separate from his employment, the petitioner developed an automobile visor to reduce sun glare. The petitioner patented this innovation. His claim to eligibility is the planned manufacture and marketing of this visor.

The director concluded that the petitioner had not demonstrated a past record of success sufficient to warrant a waiver of the job offer/labor certification requirement. The AAO concurred. While the AAO questioned whether the 1989 award was an academic award and noted the lack of citations of the petitioner's published articles, the AAO's main conclusion was that the record lacked evidence of the significance of the visor on which the petitioner's eligibility claim is based. Specifically, the AAO concluded that the petitioner had not demonstrated that the visor was considered a significant safety breakthrough by independent experts throughout the industry. Acknowledging that the petitioner was in contact with car manufacturers regarding the visor, the AAO noted the lack of contracts between the petitioner's company, Lupsor, and car manufacturers. The AAO also noted that most of the negotiations between Lupsor and Renault and Nissan took place after the date of filing. The AAO cited *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971) for the proposition that a petitioner must establish eligibility as of the date of filing. *See also* 8 C.F.R. § 103.2(b)(12). The AAO also rejected the argument that the petitioner's patents were persuasive evidence of his track record of success. The AAO noted the high number of patent applications received and approved by the U.S. Patent Office. Ultimately, the AAO concluded:

While the high expectations regarding the petitioner's safety visor may yet come to fruition, at this time the waiver application appears premature.

In sum, the available evidence does not persuasively 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.

On motion, counsel asserts that the record demonstrates the "acceptance of the RFGS Visor by Renault and initiation of the purchasing process, as well as additional auto manufacturers' interest in the RFGS visor." Counsel further asserts that the record demonstrates the significance of the petitioner's earlier work in chemistry through the 1989 award and "its immediate industry implementation." As evidence that the petitioner's patent is not merely one of hundreds filed with the patent office, the petitioner submits what purports to be evidence that

only 10 and 23 U.S. patents were filed in the same two classes since 1941. Counsel further asserts that the petitioner's French security clearance from 1991 through 1998 prevents any discussion of his work during that time. Counsel characterizes the correspondence between the petitioner and Renault and the petitioner and Nissan as demonstrating the commitment both companies have made to incorporate the visor. Specifically, counsel asserts that Renault has evaluated the visor and agreed upon a price of \$50 to \$60 dollars per car to be installed in identified models in 2003 and 2004. Counsel further asserts that Nissan has agreed to pay an additional \$25 per car for the visor and that they "wanted to see the product in real world driving conditions to see if the customer value would increase."

This office has previously stated that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 n. 7, (Comm. 1998). Regardless of how many patents may have been filed in this class, it remains that the petitioner must demonstrate that his patent has generated wide interest in the field such that we can infer that the innovation is in the national interest.

Much of the evidence is mischaracterized by counsel and dated after the date of filing. While Renault did test the visor for possible interference with an airbag, as late as September 14, 2001, according to notes of a meeting on that date, the European entity that conducted the airbag test still had concerns about the visor meeting certain regulations and had only agreed "to study with Lupsor this system within a feasibility and passive safety and photometry studies to comply with carmakers requirement and regulations texts." Minutes of an October 17, 2001 meeting do identify four Renault models identified for inclusion of the visor in 2003 and 2004 as well as a reference to \$50-\$60 per car. It is not clear, however, who prepared these minutes. They do not represent a binding contract or a legal offer by Renault. The petition was filed on May 1, 2000. As noted by the AAO in our previous decision, the record contains no commitments from car manufacturers as of that date. Counsel does not address this problem other than to assert that acceptance by the car manufacturer is merely the beginning of the process that has continued after the date of filing. We affirm our previous finding that Renault had not committed to installation of the visor as of the filing date. Moreover, we note that the record contains no evidence that Renault cars, or more specifically the models identified for inclusion of the visor, are sold in the United States. Thus, the inclusion of the petitioner's visor in these models has no impact on the national interest of the United States.

While Nissan cars are sold in the United States, the record contains even less evidence of a commitment by Nissan to include visors in their cars. While Nissan did meet with the petitioner, the record does not establish a favorable outcome. On January 30, 2001, Peter Haidos sent an e-mail to the petitioner stating:

I had all of the key product planners at the meeting on 12/6. Their reaction was same as my initial reaction – there's some added benefit from the RFGS visor but not much given that most drivers wear sunglasses. We thought the additional value per car was around \$25. It would be nice to evaluate a prototype in real world driving conditions to see if there might be more value and to get customer opinion.

On March 21, 2001, Robert Sump at Nissan set an e-mail stating:

I will try to get clarification from Pete about his interest level. I would like to close this issue one way or the other i.e. proceed with the order of some prototypes or say we have decided not to pursue this idea.

Given the lack of correspondence after that date, the petitioner has not established that Nissan decided to pursue the visor.

Other evidence after the date of filing, such as the e-mail correspondence from Joseph Harary, Executive Vice President and General Counsel for Research Frontiers, Inc., regarding the petitioner's proposed licensing arrangement with this company, suggests that the petitioner is not manufacturing the visor as original claimed. Noting that the petitioner's website does not indicate that the petitioner is a manufacturer, Mr. Harary asks: "Does your company currently have the necessary resources and capital to become involved as a licensee and to do the development and engineering work necessary?" Mr. Harary's e-mail is dated January 31, 2001. The record contains no additional correspondence from him. Thus, it does not appear that the petitioner reached any agreement with Research Frontiers, Inc.

It remains, the record is devoid of any evidence that the petitioner has a track record of success that suggests he will be able to market his visor to car manufacturers selling cars in the United States.

The petitioner's work prior to 1998 is also not persuasive. The record does not support counsel's assertion that the petitioner's published work that was rewarded in 1989 was immediately implemented by the industry. Further, we cannot simply infer from the fact that the petitioner was granted a security clearance that he has a track record of success during that period. Moreover, the petitioner's work has involved information technology since 1990. Thus, it is not clear that his employment between 1990 and 1998 is even relevant to his current promotion of his patented technology.

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. Accordingly, the previous decision of the AAO will be affirmed, and the petition will be denied.

**ORDER:** The AAO's decision of February 27, 2003 is affirmed. The petition is denied.