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U.S. Citizenship  
and Immigration  
Services



FILE:



Office: NEBRASKA SERVICE CENTER

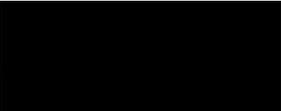
Date:

MAR 31 2004

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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:

SELF-REPRESENTED

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.

for *Mari Johnson*  
Robert P. Wiemann, Director  
Administrative Appeals Office

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prevent clearly unwarranted  
invasion of personal privacy**

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**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 a research assistant and Ph.D. candidate in the Imaging Computing Systems Laboratory at the University of Washington. 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 Master of Science in Physics from the University of Washington (1997). The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner 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 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, the petitioner states:

I am currently a research assistant and Ph.D. candidate in the Imaging Computing Systems Laboratory (ICSL) at the University of Washington. ICSL is a leading edge laboratory in developing computer and medical imaging systems. The lab has broad connections with industries and is always working on the frontline of computer and medical imaging techniques.

\* \* \*

My research interests in ICSL include working on the latest digital image and video processing techniques, developing cutting edge knowledge in computer vision, and delivering brand new techniques to the public.

\* \* \*

I firmly believe that my talents in computer imaging and vision technologies can contribute a tremendous amount to the United States... And only in the United States...can my potential be fully developed and utilized.

Along with documentation pertaining to his field of research, the petitioner submitted three witness letters.

Dr. Yongmin Kim, Director, ICSL, University of Washington, states:

[The petitioner] has been a graduate student under my supervision working for his Ph.D. in Electrical Engineering at the University of Washington since January 1998.

\* \* \*

[The petitioner] has been working on the research and development of image segmentation and video object tracking algorithms since January 1998 when he joined my Image Computing Systems Laboratory (ICSL). In such a short time, he quickly learned the leading edge of this field as well as mastering several related areas, including image and video processing, segmentation, tracking, MPEG-4 standard, and mediaprocessors, and has started to make a series of inventions. [The petitioner] is one of the very few outstanding researchers I have had in my laboratory in the last 17 years. He possesses extraordinary talents in research with his creativity, high motivation, dedication, and independence. His contributions to the field are very high and remarkable in that there have already been 7 inventions and 8 U.S. patents submitted by the University of Washington, and numerous (more than 15) foreign patents under preparation as well as several journal and conference publications.

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. In regard to the petitioner's patent applications, we note that anyone may file a patent application, regardless of whether the invention constitutes an important contribution. There is no evidence showing that any of the patents were approved by the U.S. Patent and Trademark Office (USPTO) as of the petition's filing date or that the inventions described in the patent applications have garnered significant attention throughout the computer imaging and vision technology field. 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. Even if the petitioner were to provide evidence of an approved patent as of the petition's filing date, it would carry little weight in this matter. Of far greater importance in this proceeding is the importance to the greater field of the petitioner's innovations. The granting of a patent documents that an innovation is original, but not every patented invention constitutes a significant contribution to one's field. According to statistics released by the USPTO, which are available on its website at [www.uspto.gov](http://www.uspto.gov), that office has approved over one hundred thousand patents per year since 1991. In 2001, for example, it received 345,732 applications and granted 183,975 patents. The petitioner in this case has presented no evidence showing that his technological innovations have been viewed as unusually significant among independent experts in the field of digital imaging and video processing.

Dr. John Sahr, Associate Professor of Electrical Engineering, University of Washington, states: "I have been one of a team of supervisors of [the petitioner] for the last fifteen months in the course of a research project in the Department of Electrical Engineering..." He further states:

By the time [the petitioner] completes his Ph.D. he will have had nearly three years' continuous full time practice in the art of high speed, high performance image processing, and will have demonstrated his prowess not only by completion of his Ph.D., but will very likely be owner of several U.S. and International Patents for technology that he has been instrumental in developing.

\* \* \*

In the last 15 months [the petitioner] has aggressively developed image processing tools which will have valuable application to medical imaging and to consumer multimedia. In particular, he has attacked the problem of automatic detection and recognition of objects by their shape and shading -- the "template matching" problem. A typical application would be to electronically search digitized medical x-rays to find particular organs (e.g. lungs) and having found the lungs, to perform useful analyses (estimation of volume, detection of fluid, lesions, etc.). As the ability to generate medical images grows, the need for automated analysis of medical images grows so technology along these lines is absolutely required if we are to take full advantage of the potential of medical imaging. Another application is to search a database of images for the presence of a particular face, or class of faces. The point of [the petitioner's] work is not merely to detect matches, but in fact to detect them rapidly, under conditions of varying size, lighting, rotation -- exhaustive searches, point by point, are utterly unfeasible.

Objective qualifications, such as the technical expertise and educational background of the petitioner, 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.

Dr. Sahr further states:

[The petitioner] has indeed discovered the basis for a new class of fast template matching via correlative methods which also map efficiently onto modern image processing integrated circuits. [The petitioner] has convincingly demonstrated the superiority of his approach in both speed and accuracy compared to the standard methods, and has also shown their robustness to images which are degraded by shading or noise. Although he has performed this research with the guidance of renowned experts, the core of the work is substantially of [the petitioner's] creation.

[The petitioner's] expertise in imaging will certainly benefit the United States by forcing competitors in Europe and Asia to come to us. This is already demonstrated in Professor Kim's laboratory, which has enjoyed the active and well-deserved interest of firms such as Canon and Siemens.

Dr. David Haynor, Associate Professor of Radiology at the University of Washington, states that he has "worked closely with [the petitioner] in the area of image processing for video applications" and served on his Ph.D. committee. Dr. Haynor further states:

[The petitioner] has been involved in the development of software and algorithms for the automated identification and tracking of individual objects (persons, animals, houses, etc.) in video sequences. This kind of software is expected to have significant commercial and defense applications as newer standards for indexing video content, such as MPEG-4 and MPEG-7, come into widespread use over the next decade. His research has been partially supported by Canon USA, Inc., and the resulting intellectual property will be shared by the University of Washington and Canon. His work has already resulted, in a short period of time, in the filing of approximately a half-dozen patent claims by the University. Additional claims are likely to follow in the next six months. This level of productivity is quite unusual for a graduate student and is evidence of a high level of independence and creativity as well as a good ability to reduce algorithmic ideas to practice.

\* \* \*

I have no doubt that [the petitioner] will continue to make major contributions in the applications of image processing techniques to the analysis of video images. This is an area in which the U.S. is currently the world leader, and one that is likely to grow enormously in the next few years. Therefore, I believe the retention of [the petitioner] is strongly in the interests of the United States...

Pursuant to *Matter of New York State Dept. of Transportation, supra*, we generally do not accept the argument that a particular area of research is so important that any alien qualified to work in that field must also qualify for a national interest waiver. As stated previously, the petitioner must 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 (5<sup>th</sup> Cir. 1987). Congress plainly intends the national interest waiver to be the exception rather than the rule. Here, the petitioner must demonstrate that his work has had a measurable impact on the digital imaging and video processing systems field.

In addition to the three witness letters from the petitioner's supervisors at the University of Washington, the petitioner provided correspondence from the University of Washington's Office of Technology Transfer requesting title to various inventions developed by the petitioner and his superiors. The correspondence, addressed to the petitioner and his co-inventors, states: "Transfer of title from you to the University serves as the basis for the University to commit its resources towards further evaluation of the invention so that the technology may be successfully transferred." Also provided were letters from Cannon, Inc. to the director of the University of Washington's Office of Technology Transfer requesting that, under a "License and Co-Ownership Agreement" between the University and Cannon, the University "file and prosecute" patent applications for various inventions developed by the petitioner and his superiors. While the petitioner may have benefited various projects undertaken at his university in collaboration with Cannon, Inc., the evidence presented here is not sufficient to demonstrate his ability to impact the greater field beyond the scope of those projects.

Also submitted were two university awards and evidence of the petitioner's "student" membership in the Institute of Electrical and Electronics Engineers. Recognition by one's university and memberships are 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 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 a letter describing his activities and accomplishments for his new employer (Sharp Laboratories of America), documentation of his offer of employment, and a transcript showing that he earned his doctorate on August 18, 2000. The petitioner's response to the director's request for evidence deals with the petitioner's activities subsequent to the filing of the petition. See *Matter of Katigbak, supra*. Subsequent developments in the alien's career cannot retroactively establish that he was already eligible for the classification sought as of the filing date.

Also provided was a listing of the petitioner's most recent publications. 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 and abstracts.

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 that the evidence presented did not show that the petitioner's work "was known and considered unique outside of his immediate circle of colleagues." The director concluded the record did not establish that the "contributions of the petitioner are such that they measurably exceed those of his peers."

We note here that the witnesses in this case consisted entirely of the petitioner's research supervisors from the University of Washington. Beyond demonstrating that the petitioner has played a valuable role on various research projects within the ISCL, 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 engineer, but that his work has had a national impact beyond the scope of duties intrinsic to his profession.

On appeal, the petitioner again submits a letter discussing events and accomplishments at Sharp Laboratories of America that came into existence subsequent to the petition's filing date. *See Matter of Katigbak, supra.* New circumstances that did not exist as of the filing date cannot retroactively establish eligibility as of that date.

Clearly, the petitioner's professors from the University of Washington have a high opinion of the petitioner and his work. The petitioner's technological innovations, however, do not appear to have yet had a significant influence in the larger field. The assertion that the petitioner's findings offer incremental improvements over existing system capabilities, or may eventually have commercial applications, does not persuasively distinguish the petitioner from other competent research engineers. That the petitioner shared a role in the advancement of existing image processing technology demonstrates only that he performed the job expected of him in his capacity as a research engineer/graduate research assistant. Beyond showing that his university sought to patent his digital imaging and video processing techniques, the petitioner must also show that that work is viewed throughout the greater field 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 research supervisors from the University of Washington, 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.

Citizenship and Immigration Services' 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 Sharp Laboratories of America. 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.