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FILE: [REDACTED]
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Office: Vermont Service Center

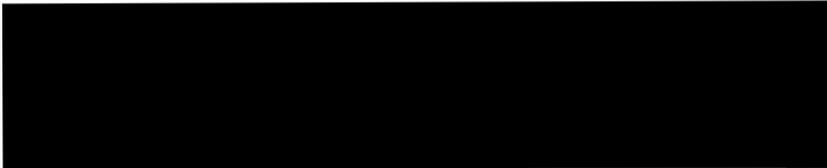
Date: MAY 04 2006

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks to classify the beneficiary 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 is a telecommunications company. At the time of filing, the beneficiary was a sector vice president and group president of New Generation Systems for the petitioning company. 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 Citizenship and Immigration Services (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.

CIS records show that the beneficiary no longer works for the petitioning company; another employer filed a Form I-129 nonimmigrant petition on the beneficiary’s behalf on August 1, 2005. That petition was approved on August 19, 2005. The AAO asked the petitioner if the company was still interested in pursuing an appeal on behalf of its former employee, and the petitioner answered in the affirmative. As the AAO advised the petitioner, however, we cannot base any finding on the prospective benefit of the beneficiary’s future work for the petitioning company, because the beneficiary has ceased to do such work. Thus, we shall consider the beneficiary’s work for the petitioner in the context of his prior track record, but we cannot find that the United States will benefit from the beneficiary’s future work for the petitioner. That being said, the beneficiary’s new employer is involved in the communications industry, and therefore the beneficiary’s change of employment does not represent a radical shift in his career; he continues to work in the same field for which the petitioner has sought a waiver on his behalf. Thus, the beneficiary’s change of employment is not inherently disqualifying (as it would have been if he had entered an entirely different field, retired, or otherwise left his area of established expertise).

[REDACTED], the petitioner’s executive director for Recruiting and Staffing, describes the petitioning company and the beneficiary’s role therein:

[The petitioner] provides software, engineering, consulting and training services to optimize the performance of communications networks worldwide. . . .

[The petitioner], as the industry leader in the design and implementation of globally compatible network solutions, provides its clients with strategic advantages that enhance their performance, lower their operating costs, and help them to realize new revenue and improved revenue opportunities. . . .

Throughout his 25 plus years of experience in the industry, [the beneficiary] has played an important role in the development and deployment of next generation telecommunications technology. He has 11 publications in journals and proceedings with international reputations. . . . [The beneficiary's] cutting-edge work in the telecommunications industry has been cited by others, and he has been relied upon widely as an expert in the field. . . . [H]e has played a key role throughout each new advancement in the industry, first through his research, and subsequently as a manage[r] and executive. . . .

[The petitioner] is the world's largest provider of Operations Support Systems (OSS). Our company's products and services provide the infrastructure behind the daily operations of telecommunications service carriers in the United States.

As Sector Vice President and Group President, New Generations Systems, [the beneficiary] is responsible for maintaining global Profit & Loss (P&L) responsibility for, and leadership of, [the petitioner's] business units responsible for existing OSS products, as well as future product road maps and NGOSS solutions. . . . [The beneficiary] develops and leads the successful extension of [the petitioner's] already dominant position in OSS. His accountability in this regard encompasses seven business units including applied research and design, as well as both product management groups spanning network provisioning, service actuation, service assurance . . . , work force management, and customer care and billing. He is responsible for the ongoing refinement of [the petitioner's] OSS market and product strategies to aggressively grow market share. . . .

[The beneficiary's] impressive research has focused on the field of telecommunications, specifically, multimedia, distributed systems, and systems and software development. His research contributions have been documented internationally through publication in leading professional journals. . . .

Without proper Operations Support Systems, the benefits of next generation technologies will be severely impeded. Thus, the importance of the development and delivery of Operational Support cannot be overstated. . . .

One significant application of Operation Support Systems is wireless communications. . . . [T]he development of advanced next generation wireless communications will be essential to the economic growth of the United States, and therefore is vital to the county's [sic] national interest. . . .

[The beneficiary] is recognized throughout the world for having developed and delivered Operational Support Systems for the management of IP networks and wireless technologies. Because these systems provide the backbone for existing and developing technologies, and will underlie all future next generation technologies, [the beneficiary's] efforts in this field will affect the industry on a national level. . . .

Because he plays such a significant role in his field of endeavor, the national interest will surely suffer if labor certification is required of [the beneficiary]. We enclose testimonials from numerous national and internationally recognized experts in the field, attesting to the fact that [the beneficiary] plays a significant role in his field, and that the national interest will be adversely affected if labor certification is required for [the beneficiary].

We shall discuss, here, examples of the witness letters mentioned above. All of the letters are from current or former officials of companies that have employed the beneficiary. [REDACTED], now president and CEO of Tata System, Inc., previously "spent sixteen years with Nortel Networks," which is where the beneficiary spent most of his career. [REDACTED] states:

I have known [the beneficiary], and have been familiar with his work, for over 10 years. . . .

[The beneficiary's] activities have had, and will continue to have, great impact on the national telecommunications industry and ultimately a large percentage of the national service providers and ultimate end-users. As a telecommunications executive, [the beneficiary] has borne responsibility for the next-generation technological developments reaching the market. These developments have impacted not just the business his employer [*sic*] – previously Nortel Networks and now [the petitioner] – but also the industry in general, as the standards and common practices of the industry alter with the technology. . . .

[The beneficiary] was specifically responsible for a number of achievements for Nortel, including ground breaking technological developments, and the foundation of several products that have gone on to become industry leaders. Through his work, [the beneficiary] was responsible for creating business lines within the telecommunications industry. In addition, those business lines created other economic benefits for the company's end-users – telecommunications service providers and consumers. . . .

There are very few telecommunications executives possessing the skills and knowledge of [the beneficiary], and with a proven track record.

[REDACTED], former president of Nortel Networks' Wireless Division, states that the beneficiary "was one of a select few in Nortel whose ideas and leadership abilities led to the creation of new profitable businesses." Several other witnesses echo this sentiment, listing various profitable ventures that the beneficiary has led.

[REDACTED], founder and CEO of Systems Applications International Corporation (SAIC), which owns the petitioning company, states:

[The beneficiary] has made a significant impact on the telecommunications industry through his work with Nortel Networks and now [the petitioning company]. He is highly regarded within the global communications industry for his technical management experience, his knowledge and expertise of the telecommunications networks and operations support systems, and his proven track record of bringing technological achievements to the market.

The letters submitted with the initial filing of the petition are not, themselves, evidence of a reputation that extends beyond the companies that have employed the beneficiary.

The director issued a request for evidence, noting that not every manager of every business qualifies for a national interest waiver, and therefore the petitioner must establish “how the beneficiary’s experience and abilities set him apart from other highly qualified managers in the field.” The director instructed the petitioner to submit evidence to show how the beneficiary’s work has directly benefited the field in general, beyond the beneficiary’s own employers and their clients. The director stated “greater weight will be given to documentation submitted by experts and institutions that are clearly independent of the beneficiary and were created contemporaneously to the beneficiary’s achievements.”

In response [REDACTED] asserts that the beneficiary “has led the development and deployment of OSS systems that are the backbone for the U.S. telecommunications network. His standards have been adopted throughout the world, thereby fundamentally impacting the direction of the field.”

The petitioner has submitted new letters from a broader range of witnesses. [REDACTED] is managing partner at Mandarin Associates Ltd., as well as the chairman and founder of TeleManagement Forum, Inc., “which is the leading industry consortium and is comprised of over four hundred communications companies throughout the world.” He states:

Though I do not know [the beneficiary] very well, I am familiar with the influence of his work on the field of telecommunications. I had the opportunity to learn of his work at [the petitioning company] when we attended business development meetings together. . . .

During his tenure at [the petitioning company, the beneficiary] was instrumental in leading the company to develop its product portfolio in adherence with international standards, a significant change of strategy. [The beneficiary’s] standards-based approach to [the petitioner’s] software portfolio, known as “Elementive,” has been a strong influence on the market for this software around the world. . . . [The beneficiary’s] work in this area enabled multiple telecommunications systems to be integrated, thereby providing better phone service throughout the U.S. and internationally.

[REDACTED] managing partner at New Venture Partners LLC, an offshoot of Lucent Technologies, states:

I know of [the beneficiary's] significant contributions to the field of telecommunications because of the close relationship in the industry of [the petitioner] and Lucent. As I was highly impressed with his accomplishments in the field, I have since engaged [the beneficiary's] services for consulting projects at New Venture Partners. [The beneficiary's] cardinal achievement in the field was his leadership of the team that developed the Operations Support Software (OSS) systems that control much of the U.S. telephone service. Prior to [the beneficiary's] leadership of this field, a myriad of systems were used to support the provision of telephone services in the U.S. This variety resulted in systemic inefficiencies and reduced the level of service available to both individual and commercial consumers of telephone services. [The beneficiary] played a key role in changing the direction of the field by establishing uniform standards for the OSS used to support telephone service in the U.S. . . . The implementation of these standardized OSS systems has improved not only the overall efficiency of phone service, but also the quality of phone service for all consumers in the U.S.

[REDACTED] a senior partner and founding principal of The Arcus Group, states:

I first encountered [the beneficiary] when he was at Nortel, at which time I was searching for an individual to lead a \$2 billion vertical market business. My attention was drawn to [the beneficiary] based upon his reputation as a key leader of turnarounds in the industry. He has directed many projects in which he masterfully bridged the gap between software and hardware development in the context of large, hardware-centered companies. . . .

[The beneficiary's] visionary leadership of the development of OSS technologies at [the petitioning company] has played a critical role in enabling the provision of next generation telecommunications services. . . . [H]e has held inordinate influence on the development of the current state of modern telecommunications. . . . [The beneficiary] has changed the course of telecommunications by leading the development of OSS technology.

The director denied the petition, stating:

It appears that your request for a national interest waiver is based in large part on the beneficiary's training, education and work experience. . . .

The evidence did not . . . establish how working for one company developing broadband technologies would be in the national interest. Seemingly those who stand to gain the most from the beneficiary's skills are the petitioner, its stockholders, and vendors.

Please note the Service adjudicates hundreds if not thousands of petitions a year for computer programmers, software developers, telecommunications specialist [*sic*], etc. In these petitions, the petitioner has gone through the labor certification process. It is unclear to the Service how the beneficiary's skills differ substantially from the petitions referenced above. If it the petitioner's contention that it is the beneficiary's skills as a manager which set him

apart from his peers [*sic*]. Then it is worth noting that there are other employment based classifications which the petitioner may wish to consider.

Counsel, on appeal, asserts that the director's decision contains numerous substantive errors that prejudiced the outcome of that decision. We concur with counsel that the above grounds for denial are flawed for several reasons. The petitioner has not portrayed the beneficiary simply as a computer programmer or software developer, as the director suggested on appeal, and the petitioner eventually submitted independent evidence showing that the impact of the beneficiary's work extends throughout the industry. The director's mention of "other employment based classifications" appears to be a reference to the classification for multinational managers and executives, established by section 203(b)(1)(C) of the Act. That classification requires the alien beneficiary to have worked outside the United States for the petitioning corporation. Here, all of the beneficiary's work for the petitioner has been in the United States. Thus, he would not qualify for classification under section 203(b)(1)(C) of the Act. These errors in the director's decision do not readily suggest that the decision resulted from careful review of the evidence in the record.

Counsel argues that the petitioner has amply demonstrated that the beneficiary has a long history of significant influence not only within the companies that have employed him – such influence would be routine and expected from a high-ranking executive – but also throughout the rest of the field. Witnesses who have had minimal personal contact with the beneficiary, and who therefore do not owe their knowledge of the beneficiary's work from their acquaintance with him, have attested that the beneficiary has played a major role in standardizing aspects of international telecommunications technology. The director, in denying the petition, did not even discuss these witness statements, let alone discredit or rebut them.

Counsel concludes by asserting that the beneficiary's past influence on the telecommunications industry has been of sufficient magnitude to justify projections of continued future benefit. Upon careful consideration of the record, we find sufficient evidence and independent witness statements to justify counsel's assertion. The petitioner has shown that the beneficiary, as an individual, has had a direct impact on the telecommunications industry that has yielded significant benefits not only for his own employers, but nationally and internationally. These benefits appear substantially to exceed the benefit inherent in being a competent executive for a major corporation. The petitioner has shown that 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.