



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: [Redacted] Office: California Service Center Date:

AUG 16 2000

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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)

IN BEHALF OF PETITIONER:



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Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 the Service 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Terrance M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The Form I-140 petition identifies [REDACTED] as the petitioner. The petition, however, was signed not by any [REDACTED] representative, but by the alien himself. Therefore, the alien, and not [REDACTED] is effectively the petitioner, notwithstanding assertions to the contrary by counsel and the director.

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 seeks employment as a senior engineer at [REDACTED]. 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. -- The Attorney General may, when he deems it to be in the national interest, waive the requirement 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 an M.S. degree in Electrical Engineering from the [REDACTED]. 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 Service 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 Service 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.

In addition to background information about the petitioner's employer and his overall field of endeavor, the petitioner has submitted reference letters from several witnesses. The principal letter is from [redacted] then vice president of [redacted], who states:

[The petitioner] has designed and developed a crucial component of Asynchronous Digital Subscriber Line (ADSL) modem and ADSL Network Interface Card (NIC) products for Escalate Networks, Inc. These products are combination[s] of hardware and software components which provide Internet access over standard telephone lines at a speed in excess of 100 times faster than the fastest tool available in the market to date. He also heads a team of computer engineers who have designed, developed, and manufactured a prototype of these products.

The company relies on [the petitioner] to head the team of engineers for success and scheduled delivery of these projects, which have attracted capital investors to invest in [redacted]. The company also relies on these products for its main revenue generation. Therefore, we consider the success of these products essential to [redacted] survival and growth.

The petitioner has submitted numerous Internet printouts discussing ADSL and related topics in high-speed Internet access, indicating that the petitioner did not design or invent fundamental ADSL technology, but rather that he works with equipment within an already-established paradigm. These Internet printouts provide background information but do not mention [REDACTED] let alone identify it as "an industry leader." Nothing in the printouts discusses the petitioner's ADSL modem, which according to Mr. [REDACTED] was still a prototype at the time of filing. A catalog of [REDACTED] products does not list any ADSL modems.

Several witnesses who have instructed or collaborated with the petitioner assert that the petitioner "will make significant and important contributions" in his field. Some of these witnesses assert that the petitioner has already "made significant contributions," but they either do not identify those past contributions, or else fail to explain how these contributions are especially noteworthy.

The documents submitted with the initial petition suggest that the petitioner's involvement may have been important to [REDACTED] but these documents do not show that the petitioner's work for that company has been of overall greater importance than that of senior engineers at other corporations in the same field.

The petitioner subsequently submitted a personal statement in which he emphasized his activities with the [REDACTED] Chapter of the Institute of Electrical and Electronics Engineers ("IEEE"). While the petitioner had previously submitted letters from colleagues at the [REDACTED] Chapter of IEEE, the record contains no objective evidence that the petitioner has played an especially significant role for IEEE at either the statewide or national level.

The director denied the petition, stating that the petitioner had not shown that his "national impact" exceeded that of others in the field. On appeal, counsel asserts that the director disregarded the petitioner's published work, recommendation letters, and evidence of the petitioner's "substantial economic impact." Nothing in the record distinguished the petitioner's publications from the published work of countless others in the field. The recommendation letters are from professors, employers, and collaborators, and do not show that the petitioner's work has gained any notice in the field among individuals who have not worked directly with the petitioner. With regard to the petitioner's economic impact, [REDACTED] had indicated that several million dollars worth of business agreements hinged on the petitioner's work, but these agreements were tentative in nature. There is no evidence that the petitioner's work has had a greater economic impact than that of others in the field.

Counsel states on appeal that a supplemental brief is forthcoming. To date, however, the record contains no further submission and a decision shall be made based on the record as it now stands.

The petitioner was still a graduate student at the time he filed his petition, and the witnesses of record discussed the petitioner's potential future accomplishments without establishing that the petitioner's past record supports projections of future success. Given these factors, the waiver request filed in June 1998 appears to have been premature at best.

During a search of Service records, another issue has arisen which merits brief mention here. [REDACTED] the highest official of [REDACTED] to offer a statement in support of the petition, has since left that company and taken an executive position at [REDACTED]. Service records show that the petitioner soon followed Mr. [REDACTED] to [REDACTED]. Therefore, any argument regarding the importance of the petitioner to [REDACTED] is moot, because the petitioner no longer works there.

To investigate the possibility that [REDACTED] could be [REDACTED] operating under a new name, this office searched the Internet for relevant information about both companies. The results of this search follow.

The search yielded strong circumstantial evidence to indicate that [REDACTED] described by Mr. [REDACTED] as "an industry leader," ceased to exist, or at least suspended operations, shortly after the date of Mr. [REDACTED] letter. The company's former web address, [REDACTED] (provided on printouts submitted by the petitioner), now belongs to an unrelated company. [REDACTED] relocated site does not appear to have been updated since mid-1998. While the company had issued at least one press release per month, its latest press release is dated July 20, 1998, and its event calendar does not extend past October 1998. While the company's site has changed domain names, the electronic mail address for the webmaster erroneously lists the old domain name. Given this evidence which suggests that [REDACTED] was no longer viable when the appeal was filed in May 1999, it is significant that the appeal submission does not include any documentation from [REDACTED] nor any statement from any official of that company.

The petitioner had couched his national interest claim specifically in the projects which he was undertaking on behalf of [REDACTED]. The petitioner's departure from that company is therefore relevant to the adjudication of this appeal. The petitioner's departure from [REDACTED] is known to the Service as a result of subsequent petitions filed by [REDACTED]. The

petitioner has submitted nothing to show how his current employment at [REDACTED] has served or will serve the national interest.

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 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 profession, 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, U.S.C. 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

**ORDER:** The appeal is dismissed.