



U.S. Department of Justice

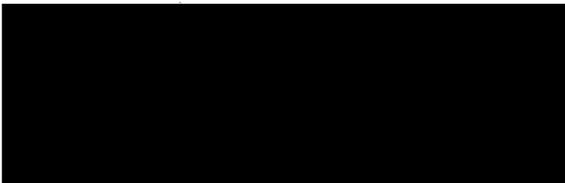
Immigration and Naturalization Service

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



File: WAC 02 106 51650

Office: CALIFORNIA SERVICE CENTER

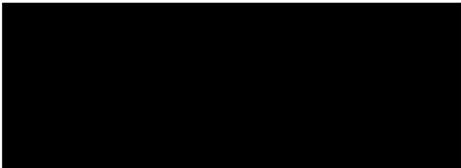
Date: **FEB 14 2003**

IN RE: Petitioner:  
Beneficiary:



Petition: Immigrant Petition for Alien Worker as an Outstanding Professor or Researcher pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(B)

IN BEHALF OF PETITIONER:



**INSTRUCTIONS:**

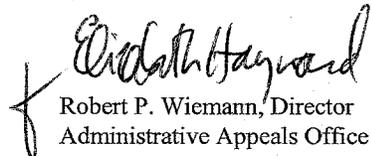
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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 that 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

  
Robert P. Wiemann, 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 sustained and the petition will be approved.

The petitioner, described as a “technology and research corporation,” seeks classification of the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as a senior software research engineer. The director determined that the beneficiary’s duties do not constitute research, and that therefore the beneficiary could not qualify for the classification sought.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(B) Outstanding Professors and Researchers. -- An alien is described in this subparagraph if --

(i) the alien is recognized internationally as outstanding in a specific academic area,

(ii) the alien has at least 3 years of experience in teaching or research in the academic area, and

(iii) the alien seeks to enter the United States --

(I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,

(II) for a comparable position with a university or institution of higher education to conduct research in the area, or

(III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

Service regulations at 8 C.F.R. § 204.5(i)(3)(iii)(C) state that a petition for an outstanding researcher must be accompanied by an offer of employment from a department, division, or institute of a private employer offering the alien a permanent research position in the alien’s academic field.

In a letter accompanying the initial submission, Gino Cesario, the petitioner’s director of human resources, describes the beneficiary’s work:

We recruited [the beneficiary] in August 2001 to conduct pioneering research leading to the design and development of the next-generation search engine that is capable of retrieving critical information even when it is corrupted or mistyped. His research work requires the use of complex mathematical algorithms as well as comprehensive knowledge of advanced mathematics, operational research, statistics, probabilities, and computer science.

On March 14, 2002, the director issued a request for further evidence. The director instructed the petitioner to submit, among other things, "a full description of the beneficiary's duties and responsibilities." In response, the petitioner has submitted a letter from Gino Cesario, stating in part:

[The beneficiary's] research work relies on highly technical skills from different disciplines . . . including:

- **Computer sciences.** Which provides the string-comparator algorithms to account for different typographical variations and the error-estimations between the compared types of data.
- **Operational Research.** Which uses very complex optimization algorithms that set linear and discrete constraints to help choose the optimal solutions.
- **Statistics.** That analyzes large-scale data files by using different statistical techniques (correlations functions to make relationships between different parameters, data fitting...)
- **Probabilities.** Which is at the heart of the entire system and rely on conditional probabilities to estimate the matching criteria.
- **Software programming.** That is all the object-oriented programming effort needed to carry out this project.

On July 5, 2002, the director issued a notice of intent to deny the petition, stating that the tasks listed by the petitioner "appear to be engineering design tasks carried out by workers in virtually all major information technology" rather than "theoretical research in the field" comparable to the research activities undertaken at colleges and universities. In response, the petitioner has submitted additional letters from various company officials. Gino Cesario states:

While some of our R&D engineers perform "simple" engineering tasks relying on existing well-established products, more than 75 of our R&D employees are engaged in innovative and breakthrough research in different areas of information technology, which will lead to the development of new type[s] of technologies.

We are currently in the midst of conducting high-level research into the development of the next generation search engine and record matching systems that will allow the retrieval of vital information within degraded or mistyped files. Such research project is different from the other projects since it involves very complex mathematics and needs a critical scientific lead. . . .

Please note that all technical employees involved in Research and Development have the title 'Engineer,' even though nearly all of them do not have Engineering degrees. This is just our company policy, and the title of Engineer, as we use it, does not in any way signify that these individuals are performing 'engineering' tasks. . . .

[F]rom the day of his arrival at our company, [the beneficiary] has been responsible for substantial innovative research in the field which has put our company on track to become a worldwide leader in the development of new matching and search engine technology.

Govind Seshadri, development manager of the petitioner's R&D Division, states:

[The beneficiary's] work . . . involves the development of a matching technology that requires from him a very high level of understanding of complex mathematics, the ability to assimilate published research articles and graduate-level technical books, and also the capability to innovate and create the technology from the ground level.

Mr. Seshadri observes that, at the outset of the project, "we had to create everything without any reference to existing products" because there were no existing products in the area being studied.

The director denied the petition, stating that "the evidence submitted in its entirety offers no new information to overcome" the finding that the beneficiary's work does not constitute research. The director stated "the description of the beneficiary's duties and responsibilities do not show that [the beneficiary's position] involves adding new information to the global body of basic knowledge in his field of advanced computer software."

On appeal, counsel asserts that the director mischaracterized the nature of the beneficiary's position. The petitioner submits additional letters from various company officials, indicating that the petitioner hired the beneficiary "for the purpose of creating and developing a new, state-of-the-art matching engine technology" rather than adapting existing technology.

Upon careful consideration, we accept the petitioner's assertion that the beneficiary's position is essentially a research position rather than an engineering position. The beneficiary's background clearly demonstrates that the beneficiary has a strong research background, and the duties described appear to involve the development of new systems, and a new theoretical framework for those systems, rather than, for instance, adapting existing software to the specific needs of a given client, or using existing knowledge to create new software that does not represent any significant advance in computer programming.

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.