

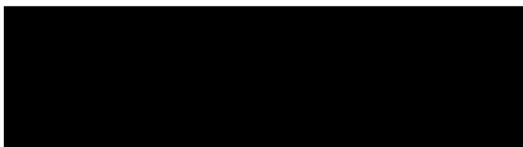


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U.S. Department of Justice

Immigration and Naturalization Service

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



Public Copy

File: [Redacted]

Office: Nebraska Service Center

Date: 11 DEC 2007

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:



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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations 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. 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 a Master's degree in civil engineering from Virginia Polytechnic Institute and State University. 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.

Matter of New York State Dept. of Transportation, I.D. 3363 (Acting Assoc. Comm. for Programs, August 7, 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.

The director conceded that the petitioner's area of research had substantial intrinsic merit and that the proposed benefits of his research would be national in scope. It remains, then, to determine whether the petitioner has established that he would benefit the national interest to a greater degree than an available U.S. worker with the same minimum qualifications.

Anthony Vanchiori, the Federal Aviation Administration's program manager of the National Center of Excellence in Aviation Operations Research (NEXTOR), writes:

[The petitioner] and I became acquainted when NEXTOR was tasked by FAA to make certain technical modifications to a computer-based simulation software known as SIMMOD. SIMMOD is the FAA's worldwide airport and airspace simulation model. At that time, [the petitioner] was engaged at one of NEXTOR's participating universities, Virginia Polytechnic Institute and State University (Virginia Tech.). The FAA had tasked NEXTOR with developing a more efficient fuel burn module to the SIMMOD model, and that tasking eventually fell to [the petitioner].

[The petitioner's] expertise involves a type of model known as a "neuro network" and, using this expertise, he developed a revolutionary approach to fuel consumption modeling. [The petitioner's] method offered several advantages in fuel burn efficiency beneficial to the aviation communication. In short, [the

petitioner's] model allows the modeler to use an economically viable source of data (the flight manual) which in turn can be used to quickly generate consumption curves for virtually any aircraft in seconds.

Professors Donald Drew and Antonio Trani at Virginia Tech provide similar information. Professor Eric Johnson at Virginia Tech provides general praise of the petitioner.

R. Douglas Trezise, Vice President of Rocondo & Associate where the petitioner currently works, writes:

[The petitioner] has been actively involved in various projects regarding the assessment of operational problems at airports and the identification of optimal solutions through simulation modeling. Utilizing the FAA's Airspace and Airfield Simulation Model (SIMMOD), [the petitioner] has applied his expertise in neural network modeling efforts at Washington Dulles, Miami International, and Dallas-Fort Worth International Airports.

The only other evidence submitted initially is the petitioner's Master's thesis, which has not been published, and other information regarding NEXTOR and SIMMOD in general. The director concluded that the petitioner had not established that his contributions to NEXTOR and SIMMOD were beyond those of other researchers working on the project.

On appeal, counsel argues that the director discounted the reference letters in the record and that his conclusion that the assertions in the reference letters were not supported by the record is "internally inconsistent." Counsel further asserts that the letter from Mr. Trezise is not self-serving because he is an employee of the FAA. The petitioner submits evidence that Dr. Trani presented the petitioner's research at the Transportation Research Board's 2000 Annual Meeting and a new letter from Mr. Trezise.

Mr. Trezise states:

While it is true that [the petitioner's] research has provided a building block for further research at Virginia Tech, his involvement with SIMMOD is far from complete. He alone has the most complete understanding of fuel burn model and is in a position to assist in its continued development. [The petitioner's] continued involvement through his association with Virginia Tech will allow researchers to better refine its capabilities to the needs of the private sector.

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. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. Matter of New York State Dept. of Transportation, supra, note 6.

All of the reference letters in the record are from professors, colleagues, employers, and collaborators. While such letters are important in providing details regarding the petitioner's work, they cannot, by themselves, establish that the petitioner has influenced his field as a whole. Mr. Trezise, while an employee of the FAA, is not independent of the petitioner's work. Rather, he oversaw the project on which the petitioner was working. Moreover, Mr. Trezise's opinion does not appear to reflect the official endorsement of the FAA. It remains, the record is absent evidence from independent experts indicating that the petitioner's neuro network methods have influenced the fields of modeling or artificial intelligence.

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.