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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



File: WAC:96 174 52768 Office: California Service Center Date:

JUL 11 2001

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:



Public Copy

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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, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California Service Center. The Associate Commissioner, Examinations, dismissed a subsequent appeal. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted, the previous decision of the Associate Commissioner will be affirmed and the petition will be denied.

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 an alien of exceptional ability. The petitioner seeks employment as a Senior Computer Analyst at Tripler Army Medical Center (Tripler AMC) in Hawaii. 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 did not qualify for classification as an alien of exceptional ability, and 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. The director did not address whether the petitioner was classifiable as a member of the professions holding an advanced degree. The Administrative Appeals Office ("AAO"), acting on behalf of the Associate Commissioner for Examinations, affirmed the director's finding, adding that the petitioner had also failed to establish eligibility as a member of the professions holding an advanced degree.

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 first issue in contention is whether the petitioner is eligible for the classification sought. On motion, the petitioner does not pursue the initial claim of exceptional ability, and therefore we need not address that claim here; we will restrict our analysis to

whether the petitioner qualifies as a member of the professions holding an advanced degree.

The regulation at 8 C.F.R. 204.5(k)(2) states, in pertinent part:

*Advanced degree* means any United States academic or professional degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree.

*Profession* means one of the occupations listed in section 101(a)(32) of the Act, as well as an occupation for which a United States Baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.

The Service's regulation at 8 C.F.R. 204.5(k)(3)(i) states:

To show that the alien is a professional holding an advanced degree, the petition must be accompanied by:

(A) An official academic record showing that the alien has an United States advanced degree or a foreign equivalent degree; or

(B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

In its prior decision, the AAO stated:

[T]he petitioner holds a Master of Science degree in Agricultural and Resource Economics from the University of Hawaii at Manoa. The petitioner submits a copy of his master's thesis, entitled Tradeoff Between Food Cost and Taste Preference in Hawaii: An Exploratory Analysis. The petitioner seeks employment designing a computer database for a medical facility; on his petition, he lists his occupation as "systems analyst." Review of the record yields no clear connection between the petitioner's chosen field of computer science and his master's degree in Agricultural and Resource Economics. The petitioner seeks classification as an advanced degree professional; the employment-based nature of the visa classification demonstrates that the advanced degree should be related to the field in which employment is sought. If the degree is unrelated to the alien's employment, then it is

arguably irrelevant to that employment and cannot serve as the basis for employment-based benefits.

On motion, the petitioner submits a letter from Professor PingSun Leung, the petitioner's academic advisor at the University of Hawaii at Manoa, who describes the program which produced the petitioner's degree:

The master's degree offered by the Department of Agricultural and Resource Economics is a science degree with the practical application of economic theory and analytic methods to diverse aspects of the commercial food and fiber industries. . . . Admission to the master's program requires a prerequisite of undergraduate courses in economics, calculus, statistics, computer programming and operations research. . . . Our graduate students come from diverse disciplines including economics, mathematics, statistics, computer science, biology, engineering, business administration, and management science. . . .

[The petitioner's] thesis . . . involved the development and analysis of a linear optimization model using multiple criteria decision-making method and statistical modeling techniques. [The petitioner] also conducted a food preference survey from a sample of the University faculty and students. His research requires a combination of knowledge in optimization model, database management, economic analysis and statistical methods.

Counsel asserts that the petitioner's work at Tripler AMC "also involves the development and analysis of a linear optimization model using multiple criteria decision-making method and statistical modeling," and therefore the petitioner's advanced degree in Agricultural and Resource Economics is directly relevant to his work as a computer analyst. Counsel states that "some University settings" offer "an 'Operations Research' major, *which specializes in real world problem solving* -- not limited to food and fiber industries." Some universities also offer master's degrees in computer science. At issue is the degree which the petitioner actually holds, rather than the degree he might have obtained had he studied under a different department at a different university.

The petitioner's work at Tripler AMC involves collating paper records into an electronic database. The argument that the petitioner's thesis work and his work at Tripler AMC involve somewhat overlapping skill sets does not persuade us that the petitioner holds an advanced degree which is comparable to a master's degree in computer science. The vague reference to "real world problem solving" could apply to a very broad spectrum of occupations. None of the background documentation cited on motion demonstrates that a degree in Agricultural and Resource Economics

constitutes the functional equivalent of a degree in Computer Science or Computer Engineering.

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.

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.

In its initial decision, the AAO found that the petitioner's work was primarily of concern to one department at one hospital, with no demonstrated significance on a broader, national level. Witnesses had indicated that the possibility existed that the petitioner's paperless record system would be adopted on a larger scale, but there was no evidence that such a process had begun. On motion, the petitioner submits letters to support counsel's claim that the petitioner's "superior system is also being seriously considered by others in the civilian and military medical establishment."

The petition in this matter was filed in June 1996. Developments after that date cannot retroactively establish the petitioner's eligibility as of the June 1996 filing date. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. See Matter of Izumii, I.D. 3360 (Assoc. Comm., Examinations, July 13, 1998). See also Matter of Katiqbak, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

The record suggests that, well after the petition's filing date, the petitioner had refined his system to a degree that it could be offered to other hospitals. The petitioner submits letters, all dated March 1998, from officials of various hospitals. For example, [redacted] chief of Obstetric Services at [redacted] Army Medical Center, states "[t]he electronic record system as designed by [the petitioner] will be an exceptional asset to our patient care." [redacted] does not indicate that his hospital already uses the system, or that it was studying the system as early as June 1996; he states only that he has been allotted the funds necessary to purchase the system.

[redacted] of Baystate Medical Center states:

Baystate is currently [i.e., as of March 1998] in search of a computerized obstetrical charting system. I am a member of the Information Management for Perinatal Systems Committee which has been charged with the evaluation of available obstetrical charting systems.

I learned about the Tripler Computerized Obstetrical Charting System and met [the petitioner] while I was in the military. Since that time . . . I have had the opportunity to evaluate many obstetrical charting systems.

[redacted] asserts that the petitioner's system is simpler and more efficient than most of the other systems that he has evaluated, and for that reason "our hospital is very interested in considering [the petitioner's] software system to fill our demanding needs."

Counsel's assertion that the petitioner's system is of interest to civilian as well as military hospitals is somewhat misleading. Two civilian medical entities are represented on motion. One is Baystate Medical Center, which learned of the system because [redacted] used to be in the military, where he met the petitioner. The other is Colorado Permanente Medical Group, which learned of the system because one of its physicians, [redacted] "recently spent two weeks on active US Army duty working as an

OB/Gyn physician at Tripler Army Medical Center." That Dr. Parke stated in March 1998 that he "recently" discovered the petitioner's system does not suggest that he knew of it when the petition was filed. Indeed, the record suggests that the petitioner's computer system was still in development at the time of filing, and was implemented sometime after that date.

Counsel notes that the petitioner "has been presented the Achievement Medal for Civilian Service" by the commander at Tripler AMC. The record contains no indication as to when the petitioner received this award, which is not mentioned at all in the original record. An official at Tripler AMC also discusses a project "to design and to develop an island-wide women healthcare information network." This project, still unfinished as of March 1998, was assigned to the petitioner "in July 1997," over a year after the petition's filing.

As noted above, the petitioner has not demonstrated eligibility as a member of the professions holding an advanced degree, and therefore the national interest waiver is not available to him. Furthermore, even if the petitioner were to establish that he qualified for that classification in June 1996, as of that time the record relied largely on speculation about what could ultimately arise from a then-ongoing project. Assertions about developments after June 1996 are more appropriately considered in the context of a new petition,<sup>1</sup> because they do not address the petitioner's eligibility as of the filing date. The petitioner's submissions and arguments on motion do not demonstrate that the director should have approved the petition in 1996, or that the AAO should have sustained the appeal in 1997.

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. Accordingly, the previous decision of the Associate Commissioner will be affirmed, and the petition will be denied.

**ORDER:** The Associate Commissioner's decision of December 23, 1997 is affirmed. The petition is denied.

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<sup>1</sup>This is not to imply in any way that the approval of a new petition is assured. The Service considers each petition on its own merits, and the AAO cannot take a position on the merits of a hypothetical future petition.