



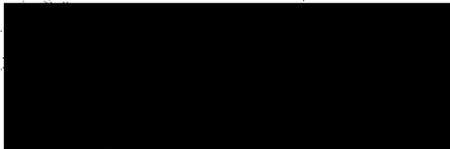
U.S. Department of Justice

Immigration and Naturalization Service

Public Copy

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



File: [Redacted] Office: Nebraska Service Center

Date: JUL 20 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:
[Redacted]

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.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATION

Robert P. Wiemann, Acting 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 an alien of exceptional ability 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 Masters degree in Middle Eastern Studies from the University of Utah. 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.

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 record contains numerous letters from professors in the United States and Italy, individuals who have collaborated with the petitioner in the creation and maintenance of his Italian language/culture internet server, and students. The letters tout the petitioner's knowledge of the internet and his innovative use of the internet and "virtual immersion" in his Italian language classes taught as an adjunct instructor while studying at the University of Utah. The record also contains articles published by the petitioner regarding the use of the internet as a tool for teaching foreign languages. Many of the letter writers point to the importance of the internet as a resource for foreign language classes, especially for less popular languages and at universities without the funding to obtain a large foreign language library. The director concluded that the internet was a worldwide convenience, and that the petitioner had not demonstrated a national benefit. The director further concluded that the petitioner had not demonstrated that the petitioner's server serves the national interest any more than other language teaching tools. On appeal, counsel argues that many innovations which benefit the United States also benefit the rest of the world, and that a world-wide benefit does not preclude a national benefit. Counsel also argues that the internet is superior to traditional methods of teaching foreign languages.

In order to demonstrate that a waiver is in the national interest, past contributions must be supported by evidence that the petitioner will make future contributions and that the petitioner's presence in the United States is important for any future contributions.

The record demonstrates that the petitioner has created and maintained an internet server useful for teaching Italian. The record further demonstrates that the petitioner has published articles regarding using the internet as a tool for teaching foreign languages and has given presentations at conferences on the same subject. The petitioner claims that he will be working as a professor for the University of Utah. The record, however, also indicates that the petitioner has been accepted into two doctoral programs, one in Italian studies at the Institut de Recherches sur le Moderne at the Université de Savoie in Chambéry, France and the other in Computing Technology in Education at Southeastern University. Neither program requires the petitioner's presence at the school.

The record contains several letters and email messages from educators indicating that they have

successfully adopted the petitioner's methods for using the internet to teach foreign languages or expressing an interest in doing so. Clearly the petitioner has developed a reputation as an expert in this area. As demonstrated by the letters from educators outside the United States who have also benefited from the petitioner's work, however, the petitioner's presence is not required for educators to benefit from his theories and methods. None of the letters submitted in support of the petition or on appeal address why the petitioner's physical presence in the United States is in the national interest. While we don't agree with the director that a world-wide benefit is not in the national interest, the international nature of the internet clearly indicates that the petitioner can continue his work on his Italian server and advise educators within and outside the United States from outside the United States. Nor is the petitioner's presence in the United States required for the doctoral program at Southeastern University. The petitioner's presence in the United States would only benefit the University of Utah, a local benefit.

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.