



U.S. Department of Justice

Immigration and Naturalization Service

Public Copy

BB

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



File: EAC 98 180 50148 Office: Vermont 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: Self-represented

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,  
EXAMINATIONS

Robert P. Wiemann, Acting Director  
Administrative Appeals Office

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

We note that the record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, from [REDACTED]. The petitioner, however, has since stated "I am filing the appeal myself and not through my attorney" and asks that future correspondence be sent directly to him. Therefore, we will consider the petitioner to be self-represented, and we shall refer to [REDACTED] as "former counsel."

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 in the medical specialty of neonatology, which concerns premature and newborn infants. While the petitioner describes himself as a "researcher," his employment experience has been mostly as a practicing physician (although he has occasionally presented reports and case studies) and as a supervisor of hospital departments. The record as a whole suggests that the petitioner intends to engage in clinical practice, and possibly administration, as well as research.

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 claims eligibility as an alien of exceptional ability. The director did not address this claim, but the director did find that the petitioner qualifies for the parallel classification of a member of the professions holding an advanced degree. The record indicates that competent authorities have recognized the petitioner's Bachelor of Medicine and Bachelor of Surgery degree from M.P. Shah Medical College as the equivalent of an M.D. degree from an accredited U.S. institution. An additional finding of exceptional ability would be of no further benefit to the petitioner. The sole issue on appeal 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.

Former counsel states that the petitioner "possesses expertise recognized throughout the world in the area of neonatology such that his immigration is undoubtedly in our national interest." The petitioner describes his medical experience:

Over a decade, I have guided and advised in commissioning the Neonatal and Paediatric Care as well as in establishing and upgrading the total hospital and outpatient care of the Paediatric patients in state of the art hospitals in one of the richest countries of the world. . . .

At the King Fahd Military Medical Complex, [REDACTED] I [have been] in charge of the . . . Neonatal Intensive Care Unit (N.I.C.U.) for [the] last 6 years. This unit has grown significantly under my guidance and our results are comparable to any Neonatal Center of International status. . . .

King Fahd Hospital of [REDACTED] region had the busiest N.I.C.U. in the Kingdom of Saudi Arabia. Besides the extremely demanding clinical work, I had presented a "Clinico Pathological Grand Round" on a rare condition of a heart tumour in a neonate.

King Fahd Armed Forces Hospital in Jeddah . . . accepted a large number of complicated-referred-intrauterine transfers of pre-term and term babies. At this hospital, I presented a Grand Round on "Breast Milk - Recent Update."

The petitioner submits several witness letters. Dr. Robert E. Earnest of the Robeson County (North Carolina) Department of Public Health states:

It was a pleasure to work with [the petitioner] during 1994-1995. He was Consultant Neonatologist & Physician-In-Charge of the . . . NICU at King Fahd Military Medical Complex . . . where I was the Chief of Pediatrics. . . . [The petitioner] has an excellent scholastic academic record. . . . He performed extraordinarily well on examinations. . . . He is a member of the Royal College of Pediatrics & Child Health. . . . He was always up to date with current literature by extensive use of library and med-line searches. He was proficient in the advanced skills that are necessary for running a busy and modern NICU. . . . His factual knowledge, skills of highest caliber, keen and critical approach to the problem-solving were striking and reflected his good basic training and experience in professionally advanced units of three different countries. . . .

He presented many grand rounds of which the noteworthy of global interests [sic] were "A Scorpion Bite of an Infant needing Pediatric Intensive Care" and "Breast Milk - Recent Update" and a clinico-pathological correlation of "Tuberous Sclerosis with (L) Atrial Rhabdomyoma."

██████████ associate professor of Radiology at the University of Texas Medical Branch at Galveston, states:

I have worked with [the petitioner] in the same hospital and in the same area during my stay in . . . Saudi Arabia and Qatar. In fact I have known [the petitioner] for some 25 years since he was enrolled in the medical school in India. . . .

During his . . . period in the UK [the petitioner] excelled at his skill to ventilate not only pre-term babies but also the older children suffering from bronchiolitis . . . and septicemia. He successfully ventilated one rare case of an upper airway obstruction due to whooping cough in a six year old boy. He also had success with a nine year old boy who had been knocked down by a running train who suffered from severe chest injuries and multiple fractures leading to respiratory failure. . . .

[The petitioner] was later invited by the International Hospital Group of Slough England to help commission an intensive care unit for new-born babies at the prestigious National Guard Hospital, Jeddah, Saudi Arabia. Not only was this unit established to the finest international standards of care for the extreme pre-term babies during his tenure of 2½ years but they mastered the skill of successfully looking after many inborn and referred cases of diaphragmatic hernia. . . . Following an intact survival of 26 week old quintuplets a number of multiple babies pregnancies were dealt with such utmost care that the unit and [the petitioner] were nationally famous as an expert neonatologist for multiple birth pregnancies.

The petitioner submits similar letters from other physicians who, like the above two, worked directly with him at various hospitals in Saudi Arabia. While these witnesses are clearly very impressed with the petitioner's skills as a pediatrician and as an administrator, there is no direct evidence that the petitioner has earned similar admiration outside of his circle of former co-workers. It is somewhat misleading to assert that, because his colleagues have dispersed to several different countries, the petitioner is "recognized throughout the world."

The director requested further evidence that the petitioner has met the guidelines published in Matter of New York State Dept. of Transportation. In response, the petitioner has submitted new witness letters. Former counsel has indicated that these letters show that "[i]ndependent U.S. experts are in agreement that [the

petitioner] will play a significant role" in the field of neonatology.

[REDACTED] director of the Human Milk Bank and National Lactation Center at Georgetown University Medical Center, states:

I have known [the petitioner] for the past 6 to 7 years. . . .  
I have kept in close contact with him. . . .

He has acquired a rich array of clinical experience. . . . He is excellent in skills and knowledge required to run and administer a busy tertiary care level NICU. . . . He has developed superb clinical skills. . . .

Despite his extremely busy and clinically demanding job in Saudi Arabia, he has made very fruitful effort[s] to continue clinically based research. . . .

[The petitioner] has already made significant and substantial contributions in his field.

[REDACTED] now a pediatrician practicing in Georgia, states:

I have known [the petitioner] since 1977 whe[n] he had graduated from our medical school with first class merits. . . .

[The petitioner has worked as] a Senior Register at the King Khalid National Guard Hospital, Jeddah, Saudi Arabia. This hospital is very advance[d] and has state of the art equipment of international standard[s] providing special medical care to the elite royal family, national guards and other VIP[s] of the society. . . .

Besides clinical work, [the petitioner] has written [a] number of polic[ies] and protocols to treat very small pre-term babies between 500-1000 grams that are accepted nationally and are incorporated in the health care manual of Saudi Neonatal Care of 1990's.

[REDACTED] an internist practicing in Illinois, states:

I have known [the petitioner] since his school days. . . .

[The petitioner] has taken keen interest in developing new NICU units from scratch. . . . He is considered to be a foremost authority in looking after the major post-thoraco abdominal surgical cases like Diaphragmatic hernia, Tracheoesophageal fistula etc.

[REDACTED] a physician practicing in the U.K., states that he has "known [the petitioner] for over 12 years" and devotes the

bulk of his comments to the petitioner's teaching and administrative work. [REDACTED] description of the petitioner's work is generally similar to other descriptions already discussed.

Former counsel has deemed these witnesses "independent," but all of them have known the petitioner for several years, and many have worked closely with him. Several witnesses observe that the petitioner has been elected a Senior Fellow of the U.K. Royal College of Pediatrics, and nominated for inclusion in Marquis' Who's Who in the World.

The director denied the petition, stating that while the petitioner "is competent and knowledgeable in the field of endeavor . . . the record does not establish that the [petitioner] would prospectively benefit the national interest to a substantially greater degree than would the majority of his/her colleagues."

On appeal, the petitioner submits a copy of a certificate from the Marquis Who's Who Publications Board, stating that the petitioner is listed in the 16th edition of Who's Who in the World. This recognition could be considered to support a claim of exceptional ability. Still, a plain reading of the statute and regulations shows that aliens of exceptional ability are generally required to present a job offer with a labor certification at the time the petition is filed, and only for due cause is the job offer requirement to be waived. Clearly, exceptional ability in one's field of endeavor does not, by itself, compel the Service to grant a national interest waiver of the job offer requirement. The record does not offer enough information about Marquis' nomination and selection processes to allow the conclusion that the petitioner was included in the book because of specific achievements, rather than for holding important posts at well-known hospitals.

The petitioner also submits a copy of an article from the Journal of the American Medical Association entitled "Impact of Multiple Births on Low Birthweight—Massachusetts, 1989-1996." The petitioner did not write this article, nor does the article cite the petitioner's prior research. In a supplemental submission, the petitioner offers a March 1999 journal article entitled "Unlicensed and off label drug use in neonates." The petitioner asserts that this article illustrates "how complex Neonatology subject is. 20 years of experience will put a physician on a different platform." These articles address the intrinsic merit of neonatology as a field but, because they make no particular mention of the petitioner or his work, they cannot distinguish the petitioner from other qualified neonatologists.

The petitioner states "[i]t is well known that there is an increasing demand in the Health Sector to provide Pediatric Services in the coming few years." In occupations where the demand for workers exceeds the supply, it is not clear why the labor certification process cannot meet the needs of U.S. employers. An alien cannot establish qualification for a national interest waiver

based on the importance of his or her occupation. It is the position of the Service to grant national interest waivers on a case-by-case basis, rather than to establish blanket waivers for entire fields of endeavor. While Congress has recently created a blanket waiver (set forth in the Nursing Relief for Disadvantaged Areas Act of 1999, Public Law No. 106-95) for certain physicians who seek to practice in designated underserved areas, the petitioner has offered no indication that he seeks to practice in such an area, let alone specified which underserved area.

The petitioner notes that he has been involved in the training and testing of new physicians, as well as in the establishment of new NICUs. The petitioner has not persuasively shown, however, that his work has had more than a local impact. While some witnesses have asserted that the petitioner earned a national reputation, these witnesses are former co-workers and others who have known him for years. The record contains no direct evidence that the petitioner's work has captured appreciable attention outside of this circle of individuals. While he has published and presented some of his research findings, the petitioner does not offer evidence that others have heavily cited these findings or otherwise relied upon them to influence the quality of neonatal care at hospitals where the petitioner himself has not served as a physician and/or administrator. Regarding the petitioner's achievements with individual patients, as an individual the petitioner is not able to treat a quantity of patients that would be significant on a national scale.

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.