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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

[redacted]

File: [redacted] Office: Texas Service Center Date: 25 JUL 2001

IN RE: Petitioner: [redacted]
Beneficiary:

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.

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, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary 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, a distributor of medical equipment, seeks to employ the beneficiary as an international account executive. 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 beneficiary 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 beneficiary holds an M.B.A. degree from the University of Mississippi. The beneficiary's occupation falls within the pertinent regulatory definition of a profession. The beneficiary thus qualifies as a member of the professions holding an advanced degree. The sole issue in contention 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.

Thor Severson, general manager of the petitioning company, describes the beneficiary's role within the petitioning entity:

> His primary responsibilities include developing our distribution channel, sales network and marketing strategies in the territory of Asia-Pacific, with emphasis on China. It is critical to have a Chinese speaking person who understands the local market and culture in this position as direct customer communication and negotiations are frequent. . . . [The beneficiary] performed remarkably well in this position and has been able to increase our sales significantly. The sales in Asia-Pacific have risen 50% since [the beneficiary] joined [the petitioning company] in 1996. Distribution in China, the biggest potential market, was also established through his efforts and is going very well.
>
> [The beneficiary] has been instrumental in identifying and developing distribution partners. His [in-]depth knowledge of the market, and an ability to work closely in supporting and developing the customer base are key factors in his success in this position.

The beneficiary represented the petitioner at the Sinomed '97 trade show, which counsel describes as "the premier medical exhibition in China and Southeast Asia." The beneficiary also assisted the petitioner in obtaining Registration Certificate for Import of Medical Device. Counsel states that the beneficiary's knowledge of the proper procedures allowed the petitioner to obtain this certificate in three months rather than the more typical eight months.

The petitioner submits samples of the beneficiary's work, such as the product monograph and distribution folder for a line of safety lancets (which draw small quantities of blood for routine tests).

Also submitted with the petition are various background documents regarding the importance of trade with Asia, particularly China.

In a request for further evidence, the director noted the general advantages of increased trade with Asia, and inquired as to how this particular alien would play a significant role. The director noted that the beneficiary is at a relatively early stage in his career, and asked how the beneficiary is "significantly different from others in similar circumstances and thus in the national interest." The director asked how the beneficiary's work would benefit the United States, and not just the petitioner.

In response, Mr. Severson (identified above) states:

> [The beneficiary's] expertise, language skills, understanding of local business environment, cultural knowledge of the area make him a very important and valued employee for [the petitioning corporation]. Since 1996, he has been able to increase the sales in Asia by almost 50%, the biggest growth rate in the last four years. . . .
>
> With one-fifth of the world's population, China is [the petitioner's] strategic focus in the global marketplace as it represents one of the biggest potential markets in the world. . . . Its strong growth has given the U.S. medical device manufacturers, including [the petitioner], a great opportunity to increase sales revenues and broaden the market base.
>
> As an emerging market, China has its unique political system, economy, regulations and business protocols. Acknowledging the difference in these areas between the U.S. and China, we need a person who not only understands the advanced American business concepts but also has in-depth knowledge of the characteristics of China business environment, to help [the petitioner] reach this vital market. . . .

> Prior to hiring [the beneficiary], we interviewed over 30 candidates. . . . Some of the candidates lacked the language skills or cross-cultural experience. Some of them spoke the language but did not have the knowledge in international trade, especially in China import procedures and market regulations. [The beneficiary] turned out to be the best candidate for the position and has lived up entirely to our expectations and satisfaction with his work.

This letter explains how the beneficiary has benefited his employer, but does not address the broader issue of how the United States as a whole benefits from the beneficiary's work. Providing one company with a competitive edge over rival U.S. companies offers no net gain to the United States.

The petitioner has also submitted an article to support Mr. Severson's statement that "every $45,000 in exports creates one job on the U.S. - more than double the rate of job creation from domestic sales." This, again, is a general argument about the economic importance of exports in general. We believe that it would be far too broad to hold that every alien whose work encourages exports qualifies for a national interest waiver. The fact that the beneficiary has improved one company's ability to export its products does not necessarily translate into a significant overall economic benefit at the national level.

The director denied the petition, stating that while the beneficiary "provided a valuable service recognized by his employer, however, the matter of national interest cannot be concluded" based on the record. The director added that there is no evidence that no U.S. government agency appears to seek the petitioner's services "for the purposes of improving health care in the United States."

On appeal, counsel states that the director "incorrectly thought that this petition was based on improving U.S. healthcare. It is not. It is based on improving the U.S. economy by reducing our trade deficit." Elsewhere, [redacted] states "instead of focusing on the positive impact to the U.S. economy, the [Service] chose to consider how [the beneficiary's] job could improve U.S. healthcare." While the director's decision did contain the one reference (quoted above) to "improving health care," the remainder of the decision clearly addresses economic, rather than medical, issues. The one-sentence reference to health care, while off point, does not show that the director's decision as a whole "missed the mark" as [redacted] claims.

The petitioner submits more background documentation, establishing that increased exports to China serve the national interest. This background documentation does not indicate that this petitioner's products represent a significant percentage of overall U.S. exports

to China, or that the beneficiary's individual actions have had a discernible effect, at the national level, on the trade deficit. Mr. Severson states that his "company is expecting about $2 million in sales in the region for 1998," while the U.S. trade deficit in 1998 was $12.11 billion (according to a Wall Street Journal article in the record).

We find nothing on appeal to refute the director's conclusion that the beneficiary's efforts are primarily of benefit to the petitioning corporation, and that wider benefits are considerably attenuated. The arguments on appeal rest largely on the company's own benefit from the petitioner's involvement, and on general arguments about the significance of export as an abstracted whole.

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.