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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]

**Public Copy**

File: [redacted] Office: Nebraska Service Center Date: JUN 6 2001

IN RE: Petitioner:
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)

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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, Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained and the petition will be approved.

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 producer of forest products, seeks to employ the beneficiary as a geographic information systems ("GIS") coordinator. 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 with post-baccalaureate experience equivalent to 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 possesses a foreign degree equivalent to a U.S. baccalaureate degree and has demonstrated over five years of progressive post-baccalaureate experience in the specialty of GIS. Therefore, pursuant to 8 C.F.R. 204.5(k)(2) and 8 C.F.R. 204.5(k)(3)(i), the beneficiary can be considered to be a member of the professions with education and experience equivalent to an advanced degree. The 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.

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.

Michael J. Covey, vice president of the petitioning corporation, states:

> GIS and related analysis tools are vital components to our decision making process. To ensure the effective stewardship of our environment and natural resources, [the petitioner] must make decisions which are both informed and timely. As the analysis required to ensure compliance with both [the

> petitioner's] environmental principles and the federal and state regulatory framework becomes more complicated, the effective use of enhanced GIS and other tools becomes even more vital.

Mr. Covey then discusses specific examples of how his company utilizes GIS tools, such as "the management of the Swan Valley Grizzly Bear Conservation Agreement which was developed with the U.S. Fish and Wildlife Service," before turning to the beneficiary's qualifications:

> [The beneficiary] has worked in the field of GIS for many years and has brought invaluable experience to [the petitioner's] resource decision management team. He has had a great deal of influence in this field within [the petitioning company], particularly with our main operational GIS, Pamap. [The beneficiary] has provided us with the ability to enhance and customize the system specific to our requirements. Since 1996, [the beneficiary] has worked on the implementation of our decision support systems, which are now available on all decision maker's desktops.

Several government officials offer letters in support of the petition. U.S. Senator Max Baucus states:

> The [petitioning] company informs me that they deem [the beneficiary's] services essential and vital to the economic well-being of our state and region. He has worked in the GIS field for many years and has brought unique experience to [the petitioner's] decision management team. [The beneficiary's] expertise with [the petitioner's] main operational GIS has provided the company with the ability to enhance and customize the system specific to their requirements.

Robert L. Schrenk, director of Forest and Rangeland for the U.S. Department of Agriculture Forest Service, Region 1, discusses the overall importance of using "GIS systems to accomplish our stewardship responsibilities on the National Forests." These assertions address the intrinsic merit and perhaps national scope of GIS in general, but they do not establish why the national interest is best served if this particular beneficiary, rather than another fully qualified professional, works as the petitioner's GIS coordinator.

Edward D. Koch, fish and wildlife biologist at the Snake River Basin Office of the U.S. Fish and Wildlife Service, states:

> [The beneficiary's] work on [the petitioner's] decision support systems is important for the Service to be able to rely on [the petitioner] to continually improve their monitoring and management of important issues such as the protection of . . .

endangered species' habitat. In addition, the use of [the beneficiary's] systems for protecting stream side management zones and assisting with decisions to comply with best management practices is very beneficial.

These systems [the beneficiary] has designed and implemented assist [the petitioner's] land managers with the analysis and mapping of issues such as:

Sustainable Forest Management - Managing the forests in a sustainable, economical, and responsible manner.
Compliance analysis and mapping for forestry Best Management Practices (BMPs)
Endangered Species - Analysis and management of critical wildlife habitat.
Road Development - Minimizing the amount of road development required, managing the BMP compliance measures, and minimizing the effect of roads on critical habitat.
Habitat Conservation Planning (HCP) - Identifying and minimizing the impact on critical habitat for the Spotted owl, grizzly bear, Bull Trout, etc.
Silvicultural Activities - Effective long term management of historical, current, and future silvicultural activities such as reforestation, thinning and harvesting. . . .

[The beneficiary's] ability to transform complex and highly technical systems into usable tools for [the petitioner's] decision makers is extremely vital to the company's responsibilities and operations which directly affect the citizens of the United States.

While Mr. Koch has thoroughly detailed the beneficiary's responsibilities, he has not indicated why the national interest demands that this particular beneficiary be the one to perform those duties.

Kelsey S. Milner, associate professor at the University of Montana School of Forestry, states that the beneficiary's native "Canada has been recognized as a leader in developing GIS tools for environmental management," and that the beneficiary's "extensive experience provides [the petitioner] with the ability to effectively train, support, customize, and implement this vital management tool."

The petitioner submits a lengthy report on the use of GIS in making environmentally responsible forestry decisions. The majority of this report says little about this particular beneficiary, and those portions which discuss his work do not demonstrate that the petitioner's accomplishments are in any way unusual for a well-trained GIS technician, or that the petitioner's GIS activities would be significantly impaired if another fully qualified worker

filled the same position. It would appear that the petitioner proposes that every trained GIS professional qualifies *a priori* for a national interest waiver, although the Service has determined in Matter of New York State Dept. of Transportation, supra, that the overall importance of a given field of endeavor is not sufficient to qualify a worker in that field for the waiver. Therefore, the beneficiary does not qualify for the waiver merely because he qualifies for the position offered.

The director requested further evidence that the petitioner has met the guidelines published in Matter of New York State Dept. of Transportation. In response, counsel asserts "[t]he ongoing GIS and related processes which are [the beneficiary's] unique contributions and which he alone fully comprehends must not be interrupted." Counsel asserts that the beneficiary has a "documented record of influential accomplishments in the field of GIS." Robert Marsenich, the petitioner's director of Human Resources, states that the petitioner "took the lead role" in designing new systems such as the Sensitive Areas Warning System which establishes "a process that will automatically inform a forester of any restrictions . . . that exist to harvest in a certain area." While Mr. Marsenich has offered additional detail about the nature of the beneficiary's work, the record affords no opportunity for a meaningful comparison between the beneficiary's work and that of others qualified in GIS.

The director denied the petition, acknowledging the intrinsic merit and national scope of the beneficiary's work, but concluding that the petitioner has offered no explanation as to "why the labor certification process is inappropriate in this case." On appeal, the petitioner submits letters from two witnesses. Sen. Baucus, in his second letter, states that he is aware of the beneficiary's "exceptional track record. [The petitioner] informs me that they deem his services essential to the economic well-being of our state and region." As with his initial letter, Sen. Baucus identifies no source for his information except the petitioner itself, and therefore Sen. Baucus' statements appear to represent repetition, rather than corroboration, of the petitioner's claims.

David P. Wasgatt, III, manager of Land Administration for IP Pacific Timberlands, Inc., notes that his company is a competitor of the petitioning company, and therefore he has no vested interest in the approval of the petition. Mr. Wasgatt, who claims "extensive experience in GIS and forest inventory," states:

> My first encounter with [the beneficiary] occurred in 1997 during a technical trade conference in Huntsville, Alabama. However, I was already aware of his work through contacts at [the petitioning company]. . . .

> Because of continual technical advancements in computer operating systems, it became necessary starting in 1998 to design a new system named DIMATS (acronym for Distributed Inventory, Mapping, & Activity Tracking System), a challenge that [the beneficiary] successfully undertook while at [the petitioning company]. This new system designed and developed by [the beneficiary] applies GIS in a substantial and original manner and advances data management and analysis to a higher level than was the case before and provides a platform for future enhancements. . . .
>
> In 1999, [the beneficiary] also designed and developed the Sensitive Areas Warning System ("SAWS"), which is the first GIS program that automatically alerts foresters to areas potentially closed for various reasons . . . to timber harvesting. SAWS is a totally new system design intended to incorporate restrictions and limitations into the harvest planning processes. This system . . . reflects a significant innovation. . . .
>
> [The beneficiary] began design and development of yet another new system, Timberland Operations Manager ("TOM"), which envisions a spatial component using GIS. . . . This system is intended to manage the allocation and scheduling of logs to manufacturing facilities.
>
> As detailed above, [the beneficiary] has certainly made <u>several</u> original contributions to the field since 1996 and they fairly may be characterized as new, influential and valuable. These original contributions of his greatly exceed what could be expected from an ordinarily competent professional. . . .
>
> Without question, [the beneficiary] has concretely demonstrated a degree of expertise greatly above that encountered among GIS professionals and I can be doubly sure of this statement because of my familiarity with (the work of) numerous GIS professionals.

This new letter represents what was previously missing from the record, specifically an independent evaluation of the value of the beneficiary's contributions, rather than simply a listing of those contributions, or a general dissertation on the importance of GIS to forest conservation and the forestry industry.

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 field of endeavor, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes independent recognition of the significance of this petitioner's work rather than simply the general area of endeavor. The benefit of retaining

this alien's services outweighs the national interest which is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has 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 sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

**ORDER:** The appeal is sustained and the petition is approved.