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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: Vermont Service Center

Date:

JUN 18 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)

Public Copy

IN BEHALF OF PETITIONER:

[Redacted]

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

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 initially denied by the Director, Vermont Service Center, on May 14, 1997. The petitioner appealed this decision on May 29, 1997. The director treated the appeal as a motion and approved the petition on June 12, 1997. Subsequently, on the basis of new information received and on further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, on May 14, 1999, the director properly served the petitioner with notice of intent to revoke the approval of the immigrant visa petition, and the reasons therefore, and ultimately revoked the approval of the petition on August 10, 1999. The matter 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. On his Form I-140 petition, the petitioner indicated that he seeks employment as a "finance manager/teacher." 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.

Section 205 of the Act states that "[t]he Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204 [of the Act]."

The petitioner's eligibility for the underlying visa classification is not at issue in this proceeding. 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.

At various stages prior to the approval of the petition, the petitioner had contended that his work as a financial manager would have national impact. Here follows an example of such a statement from the petitioner:

The quantitative research papers that I have already undertaken deal chiefly with econometric and constrained optimization models. My paper known as "Econometric Study of Aggregate Consumption Functions in the United States" has brought about significant findings; one of them is the confirmation of the psychological law of Keynes from my reference sample; that is, as disposable income increases, consumption increases. Thus, it appears clear that my area of expertise, that is research and modelization issues dealing primarily with hypothesis testing and findings, will let me contribute significantly [sic] to the improvement of the National economy, National working conditions.

Counsel argued that the petitioner would be able "to assist U.S. business in tapping [African] markets. . . . [H]e is uniquely suited to provide the expertise needed to government sources as well as the private sector." Individuals involved with the

petitioner's training have attested to the petitioner's skill and enthusiasm, and the demand for services of the kind the petitioner is able to provide with his training and background.

The petitioner submitted a letter dated May 20, 1997, on the letterhead of Charles Robert White, registered principal of Intersecurities, Inc. The letter indicated that the petitioner "is in training now to eventually be a Financial Planner with our firm specializing in financial services for African Americans in general and the Senagalese [sic] people in particular." There is no evidence that the petitioner ever actually became a financial planner for Intersecurities.

Following the approval of the visa petition, the petitioner applied for adjustment to lawful permanent resident status. In conjunction with that application, the petitioner submitted a letter from [redacted] manager of Corporate Human Resources at Nextel Communications Inc., indicating that Nextel had hired the petitioner as a payroll specialist. The effective hire date was also the date of the letter, September 18, 1998.

On May 14, 1999, the director informed the petitioner of the Service's intent to revoke the approval of the petition. The director noted the petitioner's employment documentation, and concluded that there was no evidence that a corporate payroll specialist would significantly benefit the United States. With the notice of intent, the director enclosed a copy of a memorandum from the Assistant District Director for Examinations ("ADDE") of the Baltimore District Office.¹ In this memorandum, the ADDE questioned the authenticity of some of the petitioner's documents and noted that the witnesses who had attested to the petitioner's skills were individuals who had employed or trained the petitioner, rather than independent witnesses. The ADDE also observed that, despite the petitioner's purported financial and accounting acumen, a check which the petitioner had presented to the Service was rejected for lack of funds.²

In response to this notice, counsel has argued that the petitioner has submitted "numerous letters" in which the petitioner "is repeatedly referred to as a leader, possessing a combination of

¹It is not clear why this memorandum, intended purely for internal Service use, was provided to the beneficiary. Nevertheless, because the petitioner specifically addresses this memorandum on appeal, we mention the memorandum here.

²The petitioner, in a separate communication, has claimed that an unknown party fraudulently gained access to his bank account, causing the rejection of the check. The record contains no police report or other substantiating documentation.

skills rare among others." Counsel asserts that the petitioner "is an innovator, who has proven his ability to create above and beyond mere members of the profession," but counsel does not elaborate on this point. The letters in the record generally focus on the petitioner's potential, and on his academic performance as a student, rather than on demonstrable "real-world" benefits that have already arisen from his work.

Counsel states that the petitioner has received a promotion, "reflecting the confidence of his US employer and his own extraordinary ability." The employer's confidence is not a national interest issue, and there is no indication that a promotion demonstrates "extraordinary ability."

Counsel discusses the petitioner's ultimate plans "to assist US nationals, particularly, of the minority community, of increasing their ability to ensure the financial future of themselves and their family [sic]." Although the petitioner has yet to implement this plan, counsel maintains that "[t]hese activities are not speculative and justifies [sic] any reasonable projection of future benefit to the national interests."

Counsel contends that the Service has not demonstrated good and sufficient cause for revocation, because "[m]ere speculation and/or conclusory statements are not sufficient." The director, however, relied on documentary evidence submitted by the petitioner rather than speculation or conclusory statements. Furthermore, in Matter of Ho, 19 I&N Dec. 582 (BIA 1988), the Board held that revocation is justified if the director concludes that the initial petition had been approved in error.

Under separate cover, the Service received a letter from U.S. Representative [REDACTED], who met the petitioner at the University of Illinois when the two were graduate students there. Rep [REDACTED] asserts that the petitioner "has the potential to serve as a substantial and beneficial influence on the United States by increasing economic activity and productivity," but does not indicate the degree (if any) to which the petitioner has already had such an effect.

The director revoked the approval of the petition, stating that the petitioner's submission was not sufficient to overcome the stated grounds for revocation. On appeal, counsel asserts that the revocation "was without any cause, arbitrary and capricious. The same conditions which existed at the time of approval still apply to petitioner." Counsel states that a brief is forthcoming within 30 days. To date, over 21 months after the filing of the appeal, the record contains no further submission and a decision shall be made based on the record as it now stands.

A two-page letter from the petitioner accompanies the appeal. The petitioner states that, on May 1, 1999, he was "promoted to the position of the Accounting Assistant to the Director of Financial Reporting/Technical Accounting of Nextel." The petitioner contends that the stated ground for revocation is therefore "obsolete," and that his "ability to make such advancement . . . in such a short space of time" demonstrates his superior skills and abilities. The petitioner submits no evidence to support this claim, or to show that, in his new position, he will be in a position to affect the economy on a national level, and not only for his employer. The petitioner's attempt to extrapolate future national impact from his rapid promotion is speculative and not persuasive.

The petitioner, noting the ADDE's memorandum, notes letters which had previously been submitted on his behalf from Rep. [REDACTED] the petitioner's supervisor from Nextel; and one of the petitioner's former professors at the University of Illinois. These three individuals are closely connected with the petitioner, just as the ADDE had indicated, and their letters do not overcome the ADDE's assertion that the petitioner's work is apparently recognized only by those close to the petitioner.

The petitioner states that he "will graduate in December 1999 as an Information Technology Professional," and that Nextel has reimbursed his tuition expenses. This unsubstantiated claim has nothing to do with the employment cited in his initial petition. The petitioner's national interest claim rested on his work in finance, rather than information technology. 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 [REDACTED] I.D. 3360 (Assoc. Comm., Examinations, July 13, 1998), and Matter of [REDACTED] 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. In this case, even on appeal the petitioner was months away from possessing the necessary qualifications to work in information technology. The petitioner must be eligible at the time of filing; the expectation of future eligibility cannot suffice.

Furthermore, the petitioner's stated intention to seek employment in the field of information technology suggests that he intends to abandon the initial field through which he purports to serve the national interest.

The petitioner concludes his statement with general assertions about the benefits which educated immigrants offer the United States. These arguments apply to all educated immigrants and do not single out the petitioner for the special benefit of a waiver. By law, advanced-degree professionals and aliens of exceptional

ability are generally required to have a job offer and a labor certification. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. Mountain States Tel. & Tel. v. Pueblo of Santa Ana, 472 U.S. 237, 249 (1985); Sutton v. United States, 819 F.2d 1289, 1295 (5th Cir. 1987). By asserting that educated aliens inherently serve the national interest, the petitioner essentially contends that the job offer requirement should never be enforced for these visa classifications, and thus this section of the statute would have no purpose or meaningful effect. Congress plainly intends the national interest waiver to be the exception rather than the rule.

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 burden remains with the petitioner in revocation proceedings to establish that the beneficiary qualifies for the benefit sought under the immigration laws. Matter of [REDACTED] 12 I&N Dec. 715 (BIA 1968), affirmed in Matter of Estime, 19 I&N Dec. 450 (BIA 1987) and Matter of Ho, supra. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.