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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: 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 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 manufacturing firm, seeks to employ the beneficiary as a design and development engineer, specializing in hydraulic components for military aircraft. 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.S. degree in Engineering Mechanics and Mechanical Engineering from Mississippi State University. 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 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.

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.

The application for a national interest waiver cannot be approved. The regulation at 8 C.F.R. 204.5(k)(4)(ii) states, in pertinent part, "[t]o apply for the [national interest] exemption, the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate." The record does not contain this document, and therefore, by regulation, the petitioner cannot be considered for a waiver of the job offer requirement. The director, however, does not appear to have informed the petitioner of this critical omission. Below, we shall consider the merits of the petitioner's national interest claim.

Carlos G. Perea, the petitioner's vice president of Global Human Resources, describes the beneficiary's work:

In his capacity as Design and Development Engineer, [the beneficiary] will continue to be responsible for development of hydraulic pump technology utilized in high performance military aircraft. He is the [petitioner's] Project Engineer for the F-15 Eagle ("F-15") and a key participant in the F-22 Raptor ("F-22") and V-22 Osprey ("V-22") combat aircraft programs. . . . [The beneficiary] is one of only a very small number of engineers in the entire world that are currently designing and testing, or capable of designing and testing, the pump technology utilized in these aircraft. . . .

The F-22, V-22 and F-15 aircraft are of such vital importance to the national defense that it would be a serious detriment to the national defense if [the petitioner] were required to employ a minimally qualified U.S. worker for this position, instead of the best qualified person for this position.

██████████ acknowledges that the beneficiary himself had no experience with these aircraft when the petitioner hired him, but asserts that the national interest would be harmed if the petitioner were required to repeat the training process which it already undertook with the beneficiary.

██████████ appears to imply that, given the importance of the military aircraft named above, any alien qualified to work with hardware for those aircraft inherently qualifies for a national interest waiver. ██████████ thus attempts to attach eligibility for the waiver to the position, rather than the individual alien. The Service rejects the contention that the importance of a given position automatically qualifies any alien seeking that position for a waiver.

In addition to background documentation pertaining to the beneficiary's field and the importance of the F-22, the petitioner submits several witness letters. ██████████ senior project engineer with the Boeing Company (which manages the production of the F-15), states that the F-15 Pump Project "has made great progress" under the beneficiary's direction, and that the beneficiary "has solved a number of technical challenges presented by such a complex pump used on a high performance military aircraft."

██████████ engineering manager of the petitioner's Development Laboratory; Qualification Test and Product Improvements, states that the beneficiary "is a very capable employee who . . . has demonstrated that he can handle difficult work assignments." ██████████ discusses the beneficiary's responsibilities but does not explain how, or if, those duties are beyond the capacity of other trained and fully qualified engineers.

██████████ senior engineering specialist at ██████████ Inc., states:

I first became acquainted with [the beneficiary] in February 1997 when he assumed the responsibilities of lead engineer on an Engine Air Particle Separator Hydraulic Blower used on one of our aircraft. [The beneficiary] was responsible for supervising and monitoring all required testing conducted at the [petitioner's] facility. He was also instrumental in identifying and implementing numerous corrective actions to the blower design as a result of the in-house testing and flight test aircraft experience.

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 several articles from trade publications, which address the importance of the beneficiary's occupation but say nothing about the beneficiary in particular. The articles were published well after the petition's filing date.

Counsel argues "the beneficiary's special skills, knowledge and abilities could be articulated in a labor certification. However, the [labor certification process] . . . would further delay the beneficiary's ability to work on critical Department of Defense contracts." [redacted], vice president and general manager of the petitioner's Fluid Power Division, Aerospace and Marine Defense, states that this delay would result because "Department of Defense regulations prohibit [the beneficiary] from obtaining security clearances to work on certain vital testing and validation projects for military aircraft because he is not a permanent resident or U.S. citizen." In separate letters to various members of Congress, [redacted] states that the petitioner has "been forced to take [its alien employees] off military projects at this time," and that the petitioner was "unaware until very recently that [alien] employees were not authorized to work on our military programs or have access to such."

A defense contractor's admitted ignorance of security regulations does not create a national interest issue in that contractor's favor. We note that, even if the waiver were to be approved, such a waiver would not lessen the processing time of an adjustment application, and therefore the approval of this petition would not immediately remove the necessary obstacles to the beneficiary's security clearance.

Counsel has stated that it would take a year to train a U.S. employee for the position sought. Adjustment applications routinely take longer than one year to process. If, as counsel claims, it is in the national interest to minimize further delay in the project, it would appear from the evidence that the petitioner could train a U.S. worker in less time than it would take to obtain permanent residency and a security clearance for the beneficiary (especially if the U.S. worker has defense experience and an existing security clearance). The petitioner admits that the beneficiary had no experience with these military aircraft when it

hired him, so clearly the petitioner's ability to train workers in the relevant technology is not at issue.

Counsel maintains that the project is so important that it requires the best-qualified worker, rather than a minimally-qualified worker. While the labor certification process requires that an employer give preference to a minimally-qualified U.S. worker over an alien worker, it certainly does not require that the employer hire the least qualified U.S. worker who seeks the position. Counsel's objection seems to be based on the supposition that only minimally-qualified U.S. workers would seek the position if it was announced as part of the labor certification process.

The petitioner has also submitted a considerable quantity of additional letters. A number of these letters indicate that the petitioning company is not the sole source of hydraulic pumps for the F-15. For instance, [redacted] systems engineer at Robins Air Force Base, states that the petitioner was selected as "a new source of supply" for the pumps. A memorandum from [redacted] of the System Engineering Branch at Tinker Air Force Base indicates that the petitioner "shall be added to our source list for the subject pump," and that various of the petitioner's products "shall be considered a second source and two way interchangeable with" products manufactured by [redacted]

[redacted], identified above, asserts that the beneficiary "has experience with the F-22, F-15 fighter aircraft and the V-22 Tiltrotor aircraft that no U.S. worker possesses." As noted above, at least one other supplier manufactures hydraulic pumps for these aircraft (with the petitioner being "the second source"). While the beneficiary may have unique experience with the particular pump that he helped to develop, the record contains ample evidence that the availability of hydraulic pumps for the F-15 (let alone the F-15 project as a whole) does not hinge on this beneficiary's work.

The director denied the petition, concluding that the beneficiary is not irreplaceably critical to the military aircraft programs described above. The director also determined that the beneficiary's work was primarily of benefit to the petitioner rather than to the U.S. as a whole. There is no indication that counsel was involved in the preparation or submission of the petitioner's appeal.

On appeal, the petitioner cites witness letters which assert that the beneficiary was a leader in the hydraulic pump projects, and that the F-15 project would benefit from the beneficiary's continued involvement. Given the extensive documentation showing that the pumps are available from another source, we cannot conclude that the beneficiary has played an essential role in the F-15 project. While it may be desirable to have multiple sources for key parts such as the pumps, this issue does not appear to be so focal to national defense as to represent a national interest issue.

The petitioner submits documentation regarding the beneficiary's qualifications as an engineer. While much of this documentation might conceivably support a finding of exceptional ability, 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 letters in the record do not show that the beneficiary's contributions as an engineer have attracted significant attention beyond his circle of employers, instructors, and collaborators.

The petitioner clearly values the contribution which bene made to the F-15 and other projects before his removal from military projects. The beneficiary has also clearly made a favorable impression on his professors and co-workers. We do not find, however, that the beneficiary has played so significant a role in the development of military aircraft that he warrants a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought.

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.