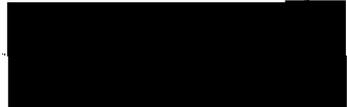




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U.S. Department of Justice  
Immigration and Naturalization Service

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



Public Copy

File: EAC 98 225 51283 Office: Vermont Service Center Date:

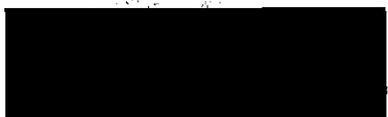
JUN 21 2001

IN RE: Petitioner:  
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:



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, Vermont 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 an alien of exceptional ability. The petitioner, an advertising firm, seeks to employ the beneficiary as a broadcast producer of "radio and television commercials for Asia and Asian-American market." 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.

The petitioner initially sought to precertify the beneficiary under Schedule A, Group II, but it is clear from subsequent communications that the petitioner abandoned that claim before the director rendered the denial decision. Counsel, on appeal, does not protest the director's failure to address this issue.

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 director did not dispute the beneficiary's eligibility for the classification sought. 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.

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.

Because the petitioner did not originally request a national interest waiver, the initial submission does not directly address the issue of how the beneficiary's work serves the national interest. Nevertheless, the initial submission does provide an overview of the beneficiary's career which is instructive at this point.

The beneficiary was the publicity coordinator for the 1990 Taipei Golden Horse International Film Festival. In 1995, the beneficiary produced a public service announcement for broadcast on Asian-

language U.S. television stations, concerning forest fire prevention. Also in 1995, the beneficiary was the agency producer for an advertisement for MCI Telecommunications Group which was a finalist in the 1996 New York Festivals' Awards Competition for Television and Cinema Advertising and Public Service Announcements. The U.S. [REDACTED] Organizing Committee selected the beneficiary "as a fund raising and public relations specialist, due to her impressive history of handling various Sino-US projects."

As executive director of [REDACTED] Communications, the beneficiary helped to organize a seminar discussing the [REDACTED] film Eat Drink Man Woman in 1994. The seminar was sponsored by the [REDACTED] Company, which distributed the film. Thus, the seminar appears to have represented part of the promotion for the film, rather than an independent event. The petitioner submits several Chinese-language articles publicizing the seminar. The record does not document the seminar's attendance or its lasting impact. The record contains two photographs taken at the seminar, only one of which shows any of the audience. That photograph shows approximately ten seats in the first and second rows. Four of those ten seats are occupied.

In early 1995, [REDACTED] Communications also organized "The Scintillating Heart of the Dragon," which consisted of a film festival and an exhibition relating to two Chinese film stars.

On December 1, 1998, the director requested further evidence that the beneficiary qualifies for a national interest waiver. In response, [REDACTED] president of the petitioning firm, states that the increasing numbers of Asians and Pacific Islanders living in the United States will benefit from the beneficiary's proven experience as a promoter of Asian cultural events, and that "many Fortune 500 corporations" have realized the importance of this potential market and hired the petitioning firm. The letter concludes "we are seeking a national interest exemption in order to continue to employ this uniquely skilled employee to produce timely and effective advertising and public relations campaigns for the ever-growing Asian-American market throughout the United States."

The director denied the petition, stating that while the beneficiary is clearly a competent worker in the public relations field, the petitioner has not established that the beneficiary's work is national in scope or that the beneficiary offers unique benefits to a degree that would justify a waiver of the statutory job offer requirement.

On appeal, counsel argues:

The documents submitted in support of the petition left absolutely no doubt that the beneficiary confers a benefit that is national in scope. Her work in the public relations field serves numerous Fortune 500 companies, including MCI, MetLife, Citibank, MoneyGram, Revlon, American Express, Hennessy,

Prodigy, The Vitamin Shoppe, and [REDACTED] Foundation. Further, she has produced a public service announcement directed toward Asian-Americans for Smokey the Bear. . . . Together with the [REDACTED] Company she has organized a seminar on Ang Lee's film "Eat, Drink, Man, Woman." The finding that the beneficiary does not confer a national benefit is clearly erroneous.

That the beneficiary plays a significant role in her field of endeavor is shown by her unique background and by the kinds of clients, many of whom are Fortune 500 companies, that her expertise and talents serve. . . .

[T]he beneficiary's significant role is a significant and outstanding one in creating a new field of advertising and public relations industry aimed toward Asian-Americans. Just as the Hispanic-American market was almost unknown twenty years ago, so now the Asian-American market is unknown, but the beneficiary is in the very vanguard of this rapidly expanding and exciting market.

Counsel has not established the importance of the beneficiary's work; he has simply listed her projects. Advertising and public relations do not inherently serve the national interest merely because high-profile clients are involved. Counsel repeatedly stresses the involvement of Fortune 500 companies, but the record does not contain evidence from those companies to establish that the beneficiary, as an individual, is responsible for significantly increasing sales for those companies.

Counsel requests "an additional period of time to file a written brief." The instructions on the Form I-290B Notice of Appeal indicate that the Service will grant additional time "for good cause." These instructions correspond to the regulation at 8 C.F.R. 103.3(a)(2)(viii). Counsel offered no explanation to show good cause for an extension, nor did counsel even specify how much additional time he would require. To date, 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.

The only evidence accompanying the appeal is a letter from Hal Goodtree, former chairman of the Freelance Producers Network, who states:

[The beneficiary's] unique abilities lie at the intersection of two areas: her television production experience and her knowledge of Asian culture and languages.

As a veteran TV producer, I've seen the advertising market shift from a landscape dominated by package goods companies . . . to one favoring telephone companies and internet service providers.

By nature, telcos and ISPs are international businesses. [The beneficiary] serves as a vital link between American companies and international customers. I have personally worked with [the beneficiary] on assignments for . . . MCI Worldcom directed at Asian-Americans who speak Cantonese, Mandarin, Japanese, Korean, Vietnamese and Taglish (Filipino). [The beneficiary's] contributions to these projects were invaluable.

The record indicates that the beneficiary's advertisements are directed at Asian immigrants, and broadcast on Asian-language television stations in the United States. Because the beneficiary's advertisements are not aired in English, which is far and away the predominant language in the United States, the beneficiary's work arguably reaches fewer potential customers than the work of most advertisers whose work is shown at a national rather than a local level. The petitioner does not elevate the beneficiary above other advertising producers merely because her advertisements are in a foreign language. While Mr. Goodtree observes that "niche marketing" is becoming more common in the advertising industry, it does not follow that a producer who serves one such niche is of greater importance to the national interest than a producer who caters to a broader audience.

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.