



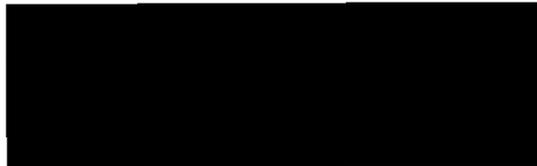
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U.S. Department of Justice

Immigration and Naturalization Service

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

Public Copy



File: [Redacted]

Office: Texas Service Center

Date:

JUN 27 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 204(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(2)

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

IN BEHALF OF PETITIONER:



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 an alien of exceptional ability. The petitioner, an international oil and gas exploration and production firm, seeks to employ the beneficiary as its vice president of Finance and International Projects. 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 does not qualify for the classification sought, and 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.<sup>1</sup>

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 first issue to be decided is whether the beneficiary qualifies as an alien of exceptional ability.<sup>2</sup> The regulation at 8 C.F.R.

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<sup>1</sup>The petitioner had filed an earlier petition, seeking the same classification on behalf of the same beneficiary. Comparison of the records of proceeding for both petitions indicates that the records, while not identical, share a significant proportion of common evidence.

<sup>2</sup>The petitioner's early correspondence suggests a claim that the beneficiary qualifies as a member of the professions with experience equivalent to an advanced degree, but the petitioner has not pursued this claim. Because the beneficiary does not hold a baccalaureate degree, the petitioner cannot meet the regulatory

204.5(k)(3)(ii) sets forth six criteria, at least three of which an alien must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business. These criteria follow below.

It is noted that the regulation at 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered." Therefore, evidence submitted to establish exceptional ability must somehow place the alien above others in the field in order to fulfill the criteria below; qualifications possessed by every member of a given field cannot demonstrate "a degree of expertise significantly above that ordinarily encountered." For example, every physician has a college degree and a license or certification; but it defies logic to claim that every physician is therefore "exceptional."

*An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability.*

The beneficiary claims no postsecondary education apart from "studying for professional chartered accounting qualifications." Such study appears to amount to vocational training rather than a full course of collegiate academic study. The record contains no official academic record from any college, university, school or other institution of learning.

*Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought.*

The petitioner has submitted documentation from the beneficiary's former employers dating back to the 1970s. This evidence satisfies this criterion.

*A license to practice the profession or certification for a particular profession or occupation.*

*Evidence of membership in professional associations.*

The petitioner does not claim that the beneficiary satisfies these two criteria.

*Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability.*

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requirement at 8 C.F.R. 204.5(k)(3)(i) which calls for an official academic record reflecting such a degree.

The petitioner currently pays the beneficiary a salary of \$150,000 per year. [REDACTED] chairman of the petitioning corporation, states that this figure is "the minimum salary" for the position of vice president of Finance and International Projects. The record does not fully document the beneficiary's past remuneration, or compare that remuneration to that of other executives in the petroleum industry. A personnel record from 1984 lists various figures under the heading "salary," the highest figure being 11,900. Because this employer is located in the U.K., this figure is presumably in British pounds, but it is not clear whether this figure amounts to the beneficiary's annual wage or a payment for a shorter period of time.

The purpose of the criterion is to demonstrate that the beneficiary's exceptional ability has earned him compensation which exceeds that of others in comparable positions. Because the petitioner has indicated that the beneficiary is a vice president of a petroleum company, other comparable executives in that industry form the baseline against which the beneficiary's salary must be measured.

*Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.*

Counsel states that the beneficiary satisfies this criterion. The record contains no evidence of institutional recognition of the beneficiary; rather, the cited evidence consists largely of letters solicited for the purpose of this petition, from witnesses selected by the beneficiary. These witness letters describe the beneficiary's role in various oil exploration projects. Other, older letters verify the beneficiary's employment with various firms, and describe the duties the beneficiary performed while in his previous positions. The beneficiary's activities in fulfillment of his duties as a corporate officer do not constitute achievements and significant contributions to the industry; while the beneficiary may have exercised considerable control over joint ventures and projects, the beneficiary was a corporate executive and therefore he would be expected to have control over such issues. Internal control of corporate ventures is not an achievement or significant contribution which would elevate the beneficiary above other corporate executives, nor is the beneficiary's high rank *prima facie* evidence of exceptional ability in business.

The accomplishments and achievements described by the witnesses concern the beneficiary's "understanding and practice of commercial negotiation" and "his knowledge of the oil business development market." The witnesses have not explained how contributing to the success of one's own employer and individual clients constitutes a significant contribution to the field or industry, beyond what would be expected of any high-level executive in a corporation such as the petitioning entity.

The petitioner submits copies of newsletter articles, describing a joint venture in which the petitioner was involved. This evidence supports the petitioner's claim that dealing with the former Soviet republics can involve labyrinthine regulations, but the published articles do not identify the beneficiary or otherwise indicate that the beneficiary's accomplishments are beyond the capacity of most petroleum executives. One of these articles focuses on financier Marc Rich.<sup>3</sup> Another article mentions the beneficiary briefly but does not identify him as a central or critical figure.

We concur with the director's finding that the petitioner has not established that the beneficiary qualifies as an alien of exceptional ability.

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. While this issue is moot because the beneficiary is not eligible for the underlying immigrant visa classification, it will be discussed briefly below.

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

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<sup>3</sup>This individual appears to be the same [redacted] who, in more recent history, was an international fugitive until his presidential pardon, which in turn was shrouded in controversy by allegations of improper influence.

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.

\_\_\_\_\_ chairman of the petitioning corporation, describes the company and the beneficiary's role therein:

[The Company] is developing various projects in the United States and internationally. It is in a position to implement comprehensive oil and gas related programs involving exploration, field development, production operations and field rehabilitation, as well as expansion and/or rehabilitation of oil and gas processing facilities. . . . The Company can provide critical assistance to partners from "third world" countries or "emerging markets" in obtaining financial support from western institutions - in the form of multilateral government guarantees and/or political risk insurance, project financing from commercial banks, or through the sourcing of pooled investment funds, or a combination thereof. . . .

With over 60 years of exploration and production experience and current responsibilities as Project Integrator for a Russian project involving very large expenditures, [the Company] is in a position to obtain the very best prices for goods and services for partner and/or client companies. In its role as Project Integrator, and when a project has been approved by the financial institution, the Company will prepare the detailed work plans to implement the approved plan. . . .

In order to meet the needs of its international projects, [the Company] requires the professional services of a Vice President, Finance and International Projects on a full time permanent basis. The Vice President will report directly to the Chairman of the Company, the undersigned, on financial performance and will have authority over project budgets that can range from \$50,000,000 to \$600,000,000, with annual budgets typically around \$50,000,000. The Vice President will direct and have total authority for the implementation and supervision of our international operations. . . .

Further, the Vice President will use his in-depth international projects operational knowledge to interface with Project Managers on a daily basis.

Mr. [REDACTED] letter does not demonstrate how the beneficiary's services serve the national interest to a greater extent than those of other top executives involved in international business. The letter primarily describes the impact of the vice president's position and duties, which suggests that any worker who was fully qualified for that position would have the same impact. The record does not establish what important benefits the beneficiary could provide which could not be expected from other workers fully qualified for the position.

Several witnesses, in separate letters, assert that the beneficiary has an intimate understanding of the regulations and bureaucratic difficulties with which foreign businesses must contend in the former Soviet republics. All of the witnesses state that they have worked closely with the beneficiary on specific projects. As an executive for a petroleum company, one would expect the petitioner to be deeply involved in petroleum development projects, and to contend with whatever difficulties arise as a result of international endeavors. The statements of these witnesses do not indicate that the beneficiary has attracted recognition beyond those who have worked with him directly, or that the beneficiary's accomplishments are of demonstrably greater value than the achievements of other executives employed in comparable positions within the petroleum industry.

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 newspaper articles regarding business deals between the petitioner and the government of Azerbaijan. These articles are dated late April 1999, and several months after the October 1998 filing of the petition. In Matter of Katiqbak, 14 I & N Dec. 45 (Reg. Comm. 1971), the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Furthermore, while counsel refers to these articles as evidence of recognition, the beneficiary's name does not appear in any of the 1999 articles.

We note that these news articles also mention two other simultaneous ventures by Exxon and Mobil in Azerbaijan (both of which were already active in the region even before the new ventures). Given that two other deals were concluded at the same time as the petitioner's deal, we cannot conclude that the beneficiary's ability to enter into arrangements with foreign governments is unmatched, or that the beneficiary has opened an otherwise inaccessible market.

Counsel cites Department of Labor statistics from 1997, showing that "Financial Managers" earned a mean annual wage of \$57,060, and

that "General Managers and Top Executives" earned a mean annual wage of \$60,960. Counsel observes that \$150,000 is considerably higher than those cited amounts.

The Department of Labor's Occupational Outlook Handbook, ("Handbook"), 1998-1999 edition, page 49, indicates that, for general managers and top executives, "salary levels vary substantially depending upon the level of managerial responsibility, length of service, and type, size, and location of the firm." The petitioner has not controlled for any of these variables. If the petroleum industry, in general, pays higher wages than other industries, than the petitioner's higher salary is to be expected. A financial manager does not make himself "exceptional" simply by choosing to work in a particularly lucrative industry.

To demonstrate the extent to which these statistics are subject to manipulation, we note that the Handbook also indicates, on page 43, that "[t]he median annual salary of financial managers was \$40,700 in 1996." This figure is, indeed, much lower than the petitioner's figure of \$150,000, although a financial manager is not necessarily an executive at the level of a vice president and therefore an absolute comparison is not possible. The same page of the Handbook also indicates that the average annual wage for chief financial officers was \$142,900 in 1997, very close to the beneficiary's salary. The petitioner's new evidence does not establish that the beneficiary earns what is considered a high salary for a vice president in the petroleum industry.

The director denied the petition, stating that the petitioner had established neither the beneficiary's exceptional ability, nor his eligibility for the national interest waiver. The director noted that four letters contain an identical paragraph, suggesting common authorship.

On appeal, counsel repeats prior arguments and stresses that the petitioner "has expertise in the Former Soviet Union oil industry." Counsel asserts that the aforementioned newspaper articles "state [the beneficiary's] achievements on behalf of [the petitioner]," although these articles do not even mention the beneficiary. As noted above, two other major petroleum companies announced joint ventures in the same country, on the same day.

Counsel condemns "the cursory dismissal of four letters due to a common phrase," stating the director's "lack of knowledge . . . of the petroleum industry and the beneficiary's qualifications." Counsel fails to explain how a more detailed knowledge of the petroleum industry would resolve the similarities in the letters. It is not merely a "phrase" which the letters have in common, but an entire paragraph, and counsel does not address this issue.

Furthermore, it remains that the petitioner's reputation appears to be limited to those who have worked directly with him in the past.

While an alien need not rise to international prominence to qualify for the waiver, it is difficult to conclude that the petitioner is an especially important or effective executive if his reputation does not extend beyond his employers and collaborators.

The petitioner engages in what is, inherently, an international enterprise involving significant sums of money. The beneficiary, like any high-level executive, plays a significant role in directing major projects of the corporation which employs him. The statute, however, does not automatically qualify top executives for the national interest waiver, and the petitioner does not establish the relative importance of the beneficiary's contributions simply by describing them. 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. In any event, we cannot consider the beneficiary for the waiver if the petitioner has not shown that he qualifies for the underlying visa classification.

The record indicates that the petitioning entity requires the services of a qualified and experienced vice president of Finance and International Projects. The record does not establish, however, that the beneficiary's impact on the national interest exceeds that of other oil development executives of comparable rank. The beneficiary's contributions have consistently been described in terms of his facilitation of beneficial business arrangements. The beneficiary is clearly highly competent at his job, but this talent does not rise to the level of exceptional ability or meet the higher burden of national interest.

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, seeking an appropriate classification, accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

**ORDER:** The appeal is dismissed.