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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: WAC-99-051-50079 Office: California Service Center

Date: 07 SEP 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:



Identifying 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, California Service Center, and 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 an alien of exceptional ability and/or a member of the professions holding an advanced degree. 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.

The petitioner holds a Medical Doctor degree from the Tbilisi Government Medical School and a Candidate of Medical Science degree from the All Union Science Center. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner 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 petitioner specializes in cardiac surgery. Clearly, the petitioner seeks employment in an area of intrinsic merit. While cardiac surgery and timely diagnosis of heart problems may provide a national benefit, it is not clear, however, that the work of one cardiac surgeon, even if exceptional, is in the national interest. See Matter of New York State Dept. of Transportation, note 3. Regardless, we concur with the director that the petitioner has not demonstrated that he will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

The petitioner submitted several reference letters. As discussed by the director, the reference letters provide little information on how the references came to know of the petitioner's work. Nor do they indicate that the petitioner has impacted his field as a whole. Dr. Yuri Busi of the Cardiology Center in Los Angeles and Dr. George Mednik of Access Medical Imaging both simply reiterate the information on the petitioner's resume without any evaluation of the impact of his contributions to his field, if any.¹

¹ Both letters contain very similar language. In addition, the record contains two photocopies of Dr. Busi's letter, one of which includes the heading "Date" and the closing "Name & Title" under the signature line. On the other copy, these have been replaced with "October 8, 1998" and "Yuri Busi, MD." These two copies, otherwise identical including the signature, suggest the letter was prepared by someone other than Dr. Busi without knowledge of who would be signing the letter. This observation, however, in no way implies that Dr. Busi did not assent to

Dr. Manuel Estioko of the Kay Medical Group writes:

[The petitioner's] most notable contribution is in the field of diagnosis and surgical treatment of a very serious disease called Celiac Artery Stenosis. His research was extensive in the study of 80 patients. His important work has been published in journals and various presentations in scientific meetings.

Dr. Estioko fails to indicate how he came to know the petitioner. Nor does he indicate the specifics of the petitioner's alleged contribution beyond naming the disease. Dr. Estioko does not indicate that the petitioner's research has impacted his own work.

Dr. Teimouraz V. Vassilidze of Beth Israel Deaconess Medical Center writes:

[The petitioner's] contribution has resulted in shortening hospital stay[s] and [a] decrease in mortality and morbidity. His technique of performing reconstructive surgery for treatment of the Celiac Trunk Artery diseases [sic] is very unique and has significantly advanced the treatment of such diseases throughout Russia. It is today common knowledge among the cardiovascular surgeons throughout Russia that [the petitioner's] contributions in this problem are enormous and have allowed relief from excruciating pain and suffering for thousands of patients.

Dr. Vassilidze further asserts that an article published in the United States in 1997 reported results which the petitioner had already reported 14 years earlier in a book written in 1983. While Dr. Vassilidze asserts the 1997 article is attached, it is not included in the record. Dr. Vassilidze's resume is also absent from the record.

Dr. Nicholas Kipshidze, an assistant professor at the Medical College of Wisconsin, summarizes the petitioner's area of expertise and states:

I believe that [the petitioner's] skill and knowledge as a specialist would definitely help advance state-of-the-art Vascular Surgery in the United State where he will practice and work as a medical consultant in the medical field.

Dr. Kipshidze's letter provides little insight into the petitioner contributions to his field. Further, his resume reveals that he was a colleague of the petitioner's at the Bakulev Institute of Cardiovascular Surgery in Moscow. Finally, Dr. Boris Shabalkin, a Professor and Chief of Cardio-Surgery in Russia simply lists the petitioner's experience and publications.

The record reveals that the petitioner authored five articles and a book between 1983 and 1985 and is currently in the process of writing a seventh article. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31,

the content of the letter by affixing his signature thereto.

1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces the Service's position that publication of scholarly articles is not automatically evidence of significant contributions; we must consider the research community's reaction to those articles.

The record contains no evidence that the petitioner's articles or book have been frequently cited. While most of the letters appear to be from independent medical professionals, they provide little insight into the potential national impact of the petitioner's abilities. The record contains no evidence from interested government agencies. Moreover, the petitioner's articles and book were all published between 1983 and 1985. The petitioner has not demonstrated that he remains on the cutting edge of cardiac surgery, assuming he ever was. In addition, according to his resume, the petitioner has not practiced medicine since 1992. The advances in cardiac medicine between 1985 or even 1992 and the present are considerable. While the petitioner indicates he is currently working on a new research paper, the record contains no evidence what institution is sponsoring his research.

Furthermore, the petitioner's resume indicates that he was the Chief of the Department of Heart and Vascular Surgery at the Institute of Surgery in Tbilisi, Georgia. The record contains no evidence from that Institute confirming this position. On appeal, counsel asserts that as the petitioner has now passed ECFMG with the exception of verification of his medical diploma, he will seek a residency position. Although it is understandable that a foreign doctor might require some time to learn U.S. medical procedures, it is not clear why a doctor who was once a chief of surgery with the ability to provide consulting services to other surgeons would need to work as a resident.

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.

Finally, while the petitioner is requesting an exemption from the labor certification, 8 C.F.R. 204.5(k)(4)(ii) provides, in pertinent part, "to apply for the exemption, the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate. . ." The record does not contain this form.

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.