

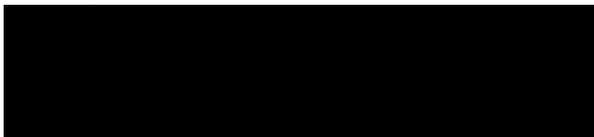


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U.S. Department of Justice
Immigration and Naturalization Service

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



File: EAC-99-097-52169 Office: Vermont Service Center Date: 10 APR 2002

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)

IN BEHALF OF PETITIONER:



Public Copy

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, 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 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. 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 did not contest that the petitioner qualifies for classification as an alien of exceptional ability, but concluded 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.

As stated above, the director did not contest that the petitioner 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.

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.

Although the petitioner filed her petition well after Matter of New York State Dept. of Transportation was published, counsel initially failed to address this decision, focusing on a previously issued decision by this office which was never designated as a precedent. In response to the director’s request for additional documentation which provided counsel with the requirements set forth in Matter of New York State Dept. of Transportation, counsel continued to rely on the non-precedent case. In discussing Matter of New York State Dept. of Transportation, counsel challenged the second prong of the test set forth in that decision, stating, “national interest does not connote benefiting the nation as a whole.” To date, neither Congress¹ nor any other competent authority has overturned the precedent decision, and counsel’s disagreement with that decision does not invalidate or overturn it. Despite counsel’s challenge to the appropriateness of the above test, he also argues that the petitioner meets the test.

The petitioner obtained a diploma in hotel and restaurant management from the [REDACTED] in Switzerland in 1983. She has been working in the hotel industry since 1985, mostly in the catering and banquet area.

¹Congress has recently amended the Act to facilitate waivers for certain physicians. This amendment demonstrates Congress’ willingness to modify the national interest waiver statute in response to Matter of New York State Dept. of Transportation; the narrow focus of the amendment implies (if only by omission) that Congress, thus far, has seen no need to modify the statute further in response to the precedent decision.

We concur with the director that the petitioner works in an area of intrinsic merit, hotel management. Next, we must determine whether the proposed benefits of her work would have a national impact. In response to the director's request for additional documentation, counsel asserted:

As earlier adverted to, the field of ability in the application of [the petitioner] involves not only one of national import but even international. Her field of skill involves an industry that has international scope involving multinational American hotel corporations. She will thus contribute in no small measure to the maintenance and assurance of America's lead and business edge in this critical and profitable field which thus contributes immensely to the U.S. national economy and commercial well-being.

The director concluded that the petitioner's services would only provide benefits to her employer. On appeal, the petitioner asserts that she will contribute to the growth of the hospitality industry. On the Form I-140, the petitioner does not list the nature of the job she seeks in the United States. Assuming she seeks to continue working for individual hotels as she has done in the past, it is not clear how her efforts would contribute to the hospitality industry as a whole.

Finally, we must determine whether the petitioner has established that she would benefit the national interest to a greater extent than an available U.S. worker with the same minimum requirements. Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at note 6.

The petitioner submitted several letters from Inter-Continental Hotel clients attesting to the petitioner's professionalism, talent, and abilities as the Assistant Banquet Manager for that hotel. For example, [REDACTED] of Procter and Gamble attests to the petitioner's professionalism and proficiency in the hospitality industry. [REDACTED] the Senior Commercial Officer at the Royal Norwegian Embassy in the Philippines defines the petitioner as organized and hardworking. [REDACTED] Deputy Head of Mission of the British Embassy in Manila, asserts that the Inter-Continental Hotel is the embassy's preferred caterer based on the petitioner's services. [REDACTED] Deputy Chief of Mission for the United States Embassy in Manila provides a letter recommending the petitioner "for positions of responsibility anywhere in the world." He further asserts, that the petitioner's "charming personality and willingness to be of assistance is notable and unique in the hotel catering business in Manila." The issue, however, is whether the petitioner would benefit the U.S. national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

The petitioner also submits letters of appreciation from clients addressed to Inter-Continental Hotel as well as letters from the petitioner's former employers.

[REDACTED] Director of Sales for Marriott, asserts that as Corporate Catering Manager for that company, the petitioner accomplished the following:

- Acting Director of Catering for over three (3) months, exceeding our quarterly catering budget by over 12%
- Established a close working relationship with high profile corporate meeting planners.
- Key player in the creation of our corporate and social catering menus.

In addition, [the petitioner] has continuously exceeded her monthly booking pace goals by 25%, if not more; thus leading her team-mates to constantly strive to acquire more business.

Her dedication to clients and attention to detail have presented our hotel with the privilege of maintaining a repeat group base of well over 50%

Her culinary skills and international education have allowed her the freedom to create extravagant, as well as essential customized menus and special events for our clientele and employees alike. In addition, she has played a major role in our annual customer appreciation celebrations.

The above accomplishments are all useful to the hotel employer, but do not reflect that the petitioner has influenced her field as a whole.

The petitioner also submitted a copy of a nomination form filed by her department head at an unspecified hotel nominating her for the "I Can Made a Difference" Award. The record contains no evidence that the petitioner won this award. Regardless, recognition by one's peers is merely one of the regulatory requirements for exceptional ability, a classification normally requiring a labor certification. As such, it is insufficient evidence that the labor certification requirement should be waived in the national interest.

On appeal, the petitioner submits information regarding her current employment at the Churchill Inter-Continental Hotel in London and the British Overseas Industrial Placement (BOND) Scheme into which the petitioner was accepted in February 2000. This information is not relevant to her eligibility at the time she filed her petition.

All of the letters in the record are from clients and employers. While useful in detailing the petitioner's skills, they cannot by themselves establish that the petitioner has influenced her field as a whole. The record contains no evidence from independent experts in the hospitality industry attesting to her influence in the field.

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.