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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 99-144 51371 Office: Vermont Service Center

Date: AUG 22 2002

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:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 that 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 sustained and the petition will be approved.

The petitioner seeks to classify the beneficiary classification 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. At the time of filing, the petitioner was chairman and CEO of International Energy Services, an energy consulting firm based in Nigeria. The petitioner seeks to work as a consultant in the United States. 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 director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. 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.

Counsel describes the petitioner's work:

[The petitioner] intends to continue his consulting work in the field of international business and energy in the U.S. if he is allowed to immigrate to our country. His work will benefit the national interest of the United States by improving our business relations with Nigeria and hence improve the U.S. economy. . . .

[The petitioner] is a leader in the field of International Business and Energy. . . .

Between 1972 and 1985, [the petitioner] worked in various capacities in the Nigerian government National Oil Company as a Senior Economist and later Head of Crude Oil Marketing Division. From 1973 to 1984, he represented Nigeria in OPEC at expert level and was a member of Ministerial Delegations to all OPEC conferences during the period. [The petitioner] is presently working as a professional consultant in the petroleum industry, where he is the Chief Executive of International Energy Services Limited. He is also the Chairman of [four other] companies.

Along with documentation pertaining to the petitioner's educational background and memberships in professional associations, the petitioner submits two witness letters. William J. Potter, president of Ridgewood Group International, states:

I am . . . on the board of the National Foreign Trade Council, a not-for-profit organization devoted to facilitating and expanding business between the U.S. and African countries. . . . [The petitioner] has at various times participated in our efforts to promote U.S.-Africa trade and investment in the energy and telecommunication sectors. . . .

[The petitioner] has a profound understanding of the international energy industry, particularly oil and gas. . . . [He] played a tremendous role in pushing Nigerian crude oil to the United States market and the Caribbean. . . . He worked closely with a number of American major oil companies working in Nigeria such as Mobil, Gulf, (later Chevron), Texaco and Ashland, along with many other independent companies and oil traders. His close working relationship with these companies and his Anglo-American educational origination influenced his views and attitudes on oil policy formation, in which he was greatly involved and actively participated as duty schedule.

[The petitioner's] participation and involvement at operational and policy levels was illustrated by his attendance at OPEC export meetings and ministerial conferences for over 10 years: 1973-1984. . . . [H]e was recently a participant at the 17th World Energy Congress held in Houston, Texas, September 13-17, 1998. The Conference featured world leaders in the Energy Industry.

Over the past seven years, he has been involved, amongst other things, in promoting cooperation and understanding between the governmental public sector and the private sector. . . . The annual Energy Forum he has single-handedly been sponsoring since 1993, has become a prominent feature of the Nigerian calendar of energy conferences for bringing together those directly involved in energy matters at the highest levels of government, industry and the professions.

John D. Tyson, Sr., president of Tyson & Associates, states:

Prior to our meeting in 1992, I was aware of [the petitioner's] reputation in the petroleum industry in Nigeria and West Africa. . . .

I had the opportunity to become aware of his exceptional work which was highly regarded by the region's National Petroleum Companies and their international major oil company partners. . . . His work helped harmonize the relationships between the oil majors and the Governments of West African oil producing nations. His work to a great extent helped give confidence to the United States and other European Governments that West Africa could become a reliable

alternative source for quality crude oil in the midst of the Gulf "Oil Crisis," and over the long term.

Mr. Tyson adds that the petitioner has provided valuable assistance with Mr. Tyson's business ventures in Nigeria.

The director requested further evidence that the petitioner has met the guidelines published in Matter of New York State Dept. of Transportation. The director specifically requested further explanation and evidence of the petitioner's accomplishments and impact in his field, and stated that documentation from independent sources would carry greater weight. In response, the petitioner has submitted copies of previously submitted certificates, and a statement from counsel. Counsel states "[t]he labor certification process is a lengthy one that is taking at least 2-3 years to complete. . . . As a result, should [the petitioner] be forced to wait that long, Americans would continue perhaps needlessly economic problems due to insufficient supply of oil and gas." This particular argument is flawed for a number of reasons. First of all, an alien is allowed to work in the United States under an H-1 visa while an application for labor certification is pending. Also, counsel had previously indicated that, in Nigeria, the petitioner had worked toward increasing Nigeria's oil exports to the United States. Counsel does not explain what more the petitioner could do in this regard in the United States that he could not do in Nigeria. Thus, the economic hardship argument is not persuasive.

Counsel then states that the petitioner "has acted as a consultant to medical institutions and will likely continue his medical consultancy work in the U.S. . . . [The petitioner] will likely not work for any one traditional employer." There is no evidence in the record that the petitioner has any medical expertise, or that he has worked as a medical consultant. Elsewhere in this statement, counsel states that the petitioner "would contribute substantially to improving the health of Americans."

Having asserted that the petitioner intends to work as a consultant with no single employer, counsel then offers the apparently contradictory assertion that "it is possible that [the petitioner] would accept a position in another country" if unable to immigrate to the United States.

The director denied the petition, acknowledging the intrinsic merit and national scope of the petitioner's work but finding that the petitioner's own contribution does not warrant a waiver of the job offer requirement that, by law, attaches to the classification that the petitioner chose to seek.

On appeal, counsel argues that the petitioner's past history of achievement amply demonstrates that the petitioner will prospectively benefit the United States. The petitioner states that he has, for decades, exercised considerable influence over Nigeria's oil and gas industry, which makes up a major part of "the second largest economy south of the Sahara." The petitioner adds that, while no longer a government employee, he continues to have an influential advisory role with Nigeria's current government. The petitioner submits several books of conference proceedings and other writings. All of these books identify the petitioner as the editor. Newspaper and

magazine articles published after the petition's filing date cannot, by themselves, demonstrate the petitioner's eligibility as of the filing date, but they do serve to establish the petitioner's continuing importance and influence in his field. The international conferences that the petitioner has orchestrated appear to be significant events in the field.

The totality of the evidence presented with the petition indicates that the petitioner is not merely a successful businessman with potentially useful ties to a foreign industry. Rather, he appears to be a major figure in Nigeria's important oil and gas industry, and a valuable asset to U.S. businesses seeking to interact with that industry. While the evidence submitted with the petition was deficient in some respects, the petitioner has overcome this deficiency on appeal. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has 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 sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.