

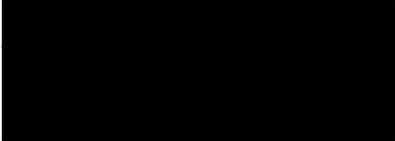


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U.S. Department of Justice
Immigration and Naturalization Service

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



File: WAC 99 045 50006 Office: California Service Center Date: **AUG 27 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: Self-represented

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, 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 a member of the professions with the equivalent of an advanced degree. The petitioner seeks employment as an attorney and importer's agent. 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 the classification sought, but that the petitioner has 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.

In the denial decision, the director did not dispute that the petitioner, a licensed attorney, qualifies as a member of the professions with post-baccalaureate experience equivalent to 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.

The petitioner describes his work, explaining that Africa imports most of its spare automobile parts. The bulk of these imports come from Asia. Economic difficulties in Asia have affected shipping schedules and product quality. Therefore, the petitioner asserts, U.S. manufacturers of spare parts have an opportunity to export those parts to African nations and fill the void left by Asian companies. The petitioner asserts that two importing companies have named him as their U.S. representative.

In addition to being an attorney, the petitioner is also a certified nursing assistant. The petitioner has formulated a "plan of action" to improve health care in nursing homes, involving "[f]ormation of a watchdog coalition that will constantly monitor activities of nursing homes." The petitioner states that, as an attorney, he "can effectively get the watchdog coalition off the ground."

The petitioner's plan for nursing home reform appears to be purely speculative. There is no evidence that any part of the plan has been implemented, or that it amounts to anything more than a proposal by the petitioner. There is no evidence that any national body is considering this proposal or working toward its implementation. While the petitioner submits a copy of a magazine article detailing abuse and neglect at nursing homes, the petitioner does not automatically serve the national interest by devising an untested plan to address the problem.

The record does, however, contain evidence regarding the petitioner's work as a representative of automobile part importers in Nigeria. Oguegbu Michael of Great Thomick International Co., Ltd., states that the petitioner served as the company lawyer and legal advisor, and that the petitioner "practically guided us in all our international business transactions" and "has helped us to make some contacts with some of these American companies" selling parts. Edoaka Fidelis,

CEO of Greenbase International Co., Ltd., asserts that the petitioner is the company's "adviser and representative in [the] U.S.A." The petitioner submits copies of invoices showing that Asian companies have shipped parts to the above two Nigerian companies. The only parts clearly identified on the invoices are fan belts. We note that the invoices are dated 1998, whereas the petitioner claims to have been in the United States since February, 1996. If the petitioner was able to engineer business deals between an importer in Africa and an exporter in Asia, while he was on neither continent, then his argument that the importation business would require him to travel frequently loses considerable force.

The documentation submitted with the petition shows that the petitioner has indeed acted as a legal advisor for two automobile part importers in Nigeria, but the record contains nothing to establish that the petitioner has achieved results significantly exceeding those of others in similar positions, or to show that the petitioner has had, or is likely to have, a greater impact than would another qualified attorney in the same position.

The director denied the petition, stating that the petitioner has not established the intrinsic merit or national scope of his work, or that that the petitioner's own contribution warrants a waiver of the job offer requirement that, by law, attaches to the classification that the petitioner chose to seek.

On appeal, the petitioner argues that the "intrinsic merit" test applies to "the 'area' in which employment is sought . . . and not the capacity in which the beneficiary intends to function in that particular area of business." We do not entirely agree with this argument, because the specific capacity in which one works decides, in part, the area in which one works. In the petitioner's case, by working as an attorney for an importer, we could point out that the petitioner's "area" of employment is law, rather than importing. Nevertheless, we find that the petitioner's work in the practice of business law has substantial intrinsic merit.

The petitioner argues that his work is national in scope because of the nature of the import/export business. We concur with the petitioner that his work, at least in principle, could have fairly direct national effects. Of course, this is not the same as a finding that the petitioner, individually, has in fact produced such national effects.

The petitioner observes that the director, in the notice of denial, refers to the importation of parts into Asia rather than Africa. The petitioner contends that this is a major error, because "U.S. exporters to Asia abound. But a U.S. auto parts exporter to Nnewi may not yet be found." Leaving aside the lopsided comparison between an entire continent (Asia) on one hand and a single city (Nnewi) on the other, it does not appear that the director's error influenced the outcome of the decision - that is, that the director would have approved the petition if the decision had read "Africa" in place of "Asia."

The petitioner argues that he "can function more effectively in this endeavor" because he, "unlike the average U.S. attorney is licensed to practice law in the U.S. and in Nigeria" and has contacts and clients already in place. The petitioner also asserts that he would be employed by Nigerian companies rather than any U.S. company. It remains that the petitioner has not demonstrated that

he, individually, has played a major, nationally significant role in the importation of automobile parts. If, as the petitioner has contended, Africa must import most of its automobile parts, then it follows that such importation would be taking place regardless of whether the petitioner was involved. While the petitioner has steady clients in Nigeria, he has not shown that his involvement will have a significant effect on the volume of U.S. automobile parts shipped to Nigeria or to Africa in general. The petitioner has not provided evidence to support his claim that he alone can bring about \$100 million in annual export sales that otherwise would not occur.

The petitioner cites examples of approved waiver applications, and states that the Service should "follow precedent" and approve his petition and waiver application. The cited cases (which cannot be identified from the brief descriptions provided) are not published decisions and thus have no weight as precedents. The petitioner has not established that the facts of those cases closely match those of his own.

The petitioner asserts that the director failed to address his "qualifications and proposals regarding improvement of healthcare for the disabled and aged in nursing homes." As we have already noted, there is no evidence that the petitioner has any past experience in the area of nursing home reform, or even that he has any employment experience in health care. The petitioner's only claimed employment in the United States consists of five months as a restaurant chef in 1998. There is no evidence that the petitioner, in his several years in the United States, has taken any meaningful steps toward national nursing home reform. The burden is on the petitioner to show that his admission is in the national interest. He does not shift that burden by producing an entirely speculative "action plan" for reform in a field in which he has no demonstrated experience.

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.