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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

[Redacted]

File: [Redacted]

Office: NEBRASKA SERVICE CENTER

Date: DEC 06 2002

IN RE: Petitioner:
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)

PUBLIC COPY

IN BEHALF OF PETITIONER:

[Redacted]

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, Nebraska 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 an alien of exceptional ability. The petitioner is a pulp mill that seeks to employ the beneficiary as its president, a position the beneficiary has held since 1995. 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 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.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements 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 beneficiary qualifies as an alien of exceptional ability. 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, 22 I&N Dec. 215 (Comm. 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.

Ronald A. Beyer, the petitioner’s director of Administration/Human Resources, describes the beneficiary’s work and the challenges he seeks to address:

[The beneficiary] qualifies for a national interest waiver because the benefit he proposes will be in a field of substantial intrinsic merit, environmentally sound production of paper pulp from recycled waste; national in scope, impacting the U.S. environment as a whole and serving as a catalyst for revitalization of the U.S. pulp and paper industry, and thus clearly presenting a significant benefit to his field of endeavor. . . .

Throughout the years, environmentalists have labeled the paper industry as among the worst polluters of our air and water. The major sources of pollution in the industry are associated with the pulping and bleaching processes. . . .

Nevertheless, before recycled paper can be used to make new paper is must be pulped, bleached, and deinked. One of the greatest challenges facing the United States Paper industry is the development of industrial processes which are both economically and environmentally sound. . . .

Meeting high environmental standards is not the only challenge facing the industry, however. Recycled pulp . . . has not met the high standards required for office paper. . . . Recycled paper products must meet exacting consumer standards in order to make recycling a viable option and meet the national goals set by the EPA and other federal bodies. . . .

While working at [the petitioning company] for the past three years in his H-1B status, [the beneficiary] has helped design and maintain complex pulp production, bleaching and deinking processes which are totally chlorine free, enabling Petitioner to create an internationally competitive mill hailed by academics, environmentalists, and industry leaders. . . .

[The petitioner's] pulp is sold all over North and South America and Europe. . . .

Due to the expertise of [the beneficiary, the petitioner] has the ability to convert office waste into pulp suitable for the fine paper used in stationery and printing.

Along with documentation pertaining to the beneficiary and the petitioner, such as copies of numerous newspaper and trade press articles from 1995 and 1996 (many of which derive from a single Associated Press report), the petitioner submits several witness letters. Governor John Engler of Michigan states:

[The beneficiary] has risen to preeminence in the field of paper and pulp production. . . .

I have met [the beneficiary] several times and have toured the [petitioner's] facilities. I am familiar with the processes used by his company and am well aware of the positive results he has achieved, bringing environmental and economic benefit to the community of Menominee, to the State of Michigan, and to our nation.

[The beneficiary] has been responsible for creating a pulp mill that produces a high-quality product while minimizing pollution, enabling U.S. business to compete in an international marketplace.

Stuart A. Lang, chairman of the board of AFR Holdco, Inc., which owns the petitioning company, states that the beneficiary "was chosen to fulfill the duties of President precisely because he is known internationally as a leader in this industry." Mr. Lang adds that the beneficiary's "skills are what have enabled us to successfully operate these plants and maintain employment in this age of uncertainty in our pulp and paper industry." Consultant Wayne Nystrom asserts that the beneficiary has made the petitioner's facilities "into one of the few profitable, environmentally friendly, technologically advanced mills in the United States." Rodney L. Young, president of Resource Information Systems, Inc., states that the petitioner "stands out as a lonely example of a company that can make a high-quality pulp from post-consumer recovered paper at a production cost that can make the operation competitive with pulp produced from wood and still be profitable. . . The landscape is littered with failed efforts in the United States to do what [the beneficiary] has done at [the petitioning company]."

The director denied the petition, acknowledging the intrinsic merit of the beneficiary's work but finding that "the incremental benefit to the environment appears to be primarily regional in scope." The director also found that the beneficiary would benefit not the paper industry as a whole, but rather the petitioner at the expense of rival companies. In response to this decision,

the petitioner has filed both a motion and an appeal. Because the motion and appeal are identical in content, we will consider the appeal here and regard the identical motion as superfluous.

Counsel asserts that the director erred by failing to issue a request for evidence in accordance with 8 C.F.R. 103.2(b)(8). At this point, the decision already having been rendered, the most expedient remedy for this complaint is the full consideration on appeal of any evidence that the petitioner would have submitted in response to such a request.

Counsel claims “[t]he Decision also states that the Petitioner has failed to show that Beneficiary exceeds the standard required to show exceptional ability.” We can find no such assertion in the denial notice. The director indicated on page 3 of the decision that “[t]he Service accepts” that the beneficiary is eligible for the classification sought.

Counsel argues that the petitioner has persuasively established the importance of the petitioner’s endeavor and of the beneficiary’s role therein, and cites newly-submitted evidence to show that while many paper mills attempted to adopt similar environmentally sound methods, most of those mills have failed and shut down while the petitioner is now an industry leader and “one of the largest office waste paper recyclers in the world.” The petitioner’s use of chlorine-free bleaching agents eliminates the emission of highly carcinogenic waste products such as dioxin.

It appears from the record that the petitioner has enjoyed exceptional success in its efforts to produce high-quality recycled pulp in an environmentally responsible way, and that the beneficiary has been important to the success of the methods and of the operation. While ensuring the success of one U.S. company at the expense of its U.S. rivals does not inherently serve the national interest, it is very much in the national interest to encourage industrial practices which reduce or eliminate hazardous wastes. The failure of several rival companies serves to demonstrate the difficulty of maintaining economic viability. The difficult adjustment which pulp mills must undergo is less serious than the long-term environmental consequences if cleaner procedures are not promoted and adopted. By establishing the petitioner as a model in this respect, the beneficiary has served the national interest and future benefits appear to be an expected consequence of his continued work in the field.

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 field of endeavor, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes that the beneficiary continues to have a significant positive impact in his field. 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.