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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 99 220 51996 Office: Vermont Service Center Date: DEC 09 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 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 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. The petitioner seeks employment as a process engineer at O'Brien & Gere Engineers, Inc. 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, 22 I&N 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.

The petitioner describes his work:

My research has been considered vital in advancing the state of understanding of Biological Nitrogen & Phosphorus Removal (BNR) processes. . . .

I investigated the role and mechanism of Simultaneous Nitrification and Denitrification (SND) in BNR processes and identified the environmental conditions that maximize SND and phosphorus removal. My experimental results upgraded the design criteria and control strategy for BNR processes. . . . I also developed a technique to determine maximum nitrification and denitrification rates in continuous processes. The techniques can be used in full-scale plants. . . .

I am currently working on a variety of contracts from local governments . . . for upgrading their wastewater treatment facilities by implementing . . . BNR technologies for improvement of the water quality in the Chesapeake Bay Program. There are similar estuaries all over the United States that require urgent treatment for wastewater management and water quality improvement.

The petitioner asserts at length that he meets certain criteria set forth at 8 C.F.R. 204.5(h)(3). These criteria, however, pertain to a different immigrant classification and therefore it would serve no useful purpose to discuss the evidence in terms of those criteria.

Along with copies of his published articles and documentation pertaining to his field of research, the petitioner submits several witness letters. Professor Donald S. Mavinic, associate dean of Graduate Studies at the University of British Columbia (where the petitioner earned his doctorate), states that the petitioner “has in the past played a very significant role in the development of BNR processes. He has been a leader in the field. The international community acknowledges the level of expertise [the petitioner] brings to the general field of BNR technology implementation.” Prof. Mavinic deems the petitioner’s contributions to be “vastly greater than any other competent professional with the same qualifications working in this field,” and he praises the petitioner’s “superb track record of accomplishments in this field.” With regard to this track record, Prof. Mavinic describes projects that the petitioner has undertaken in New York, Maryland and Virginia.

Prof. Mavinic does not elaborate as to the extent of recognition the petitioner has received from “the international community.” The record shows that the petitioner won some student awards, but there is no indication that the petitioner has won comparable recognition as a practicing engineer rather than as an engineering student whose training was not yet complete.

Dr. William C. Becker, senior technical associate at O’Brien & Gere Engineers, Inc., and director of that company’s research group, states:

I can testify to [the petitioner’s] expertise in the areas of wastewater treatment process design, process modeling, pilot studies, plant trouble shooting, and process control, and particularly application of biological nutrient removal (BNR) technologies. . . .

As a process engineer, [the petitioner] is responsible for process design for a variety of wastewater treatment plant BNR upgrade projects for the restoration of Chesapeake Bay. . . .

In addition to wastewater treatment process design, [the petitioner’s] responsibilities at O’Brien & Gere include developing research programs in regard to wastewater treatment process. [The petitioner] has conducted data analysis, modeling and report preparation for a 0.5 million gallon per day full-scale demonstration project of the selector contact stabilization process treating high strength organic waste at the Fredonia WWTP, NY – the first in the nation.

Other witnesses who have taught, employed, or studied with the petitioner offer similar endorsements, stating that the petitioner has played a significant role in upgrading various wastewater treatment plants in the United States and Canada. Many of the witnesses do not specify how the petitioner, in particular, has influenced his field; instead, they discuss the importance of reducing nitrogen and phosphorus levels in public water supplies, and assert that the petitioner’s training and education position him for a productive career in this area.

The director requested further evidence that the petitioner has met the guidelines published in Matter of New York State Dept. of Transportation. In response, the petitioner has submitted new witness letters. The petitioner states that these letters are from “independent experts” and contain “some very strong statements” to the effect that his admission will serve the national interest.

Dr. Sun-Nan Hong, vice president of USFilter/Kruger Inc., Cary, North Carolina, states:

I don't know [the petitioner] personally and he never worked for me. I got to know [the petitioner] by coming across his articles published in technical journals and presentations in the technical conferences. . . .

His experimental results upgraded design criteria and control strategy for BNR processes. . . .

[The petitioner's] thesis was very comprehensive and contributed significantly to knowledge and understanding in the area of biological treatment processes for municipal wastewater. The process (alternating aerobic/anoxic operation), which he investigated, was innovative and had several advantages, such as enhancing nitrogen removal and saving aeration energy. . . .

[The petitioner] has in the past, played a very significant role in the development of wastewater treatment technologies at both university and industry settings. His technical expertise is very unique in this field.

Dr. Gene E. Keyser, president of Key Solutions, Inc., a Florida-based consultant to the water and wastewater industry, states:

I became familiar with the work of [the petitioner] and, subsequently, his present employer, O'Brien & Gere Engineers. I had my client, Micronair, LLC, contract with the firm for the express purpose of taking advantage of [the petitioner's] expertise in both modeling and nitrogen removal and the firm's work in [the] wastewater industry. On behalf of the client, I found that there were only two sources of the required expertise to address their specific problem, a software firm/University collaborative out of Australia and O'Brien and Gere. The latter met the qualifications and expertise requirements only as a result of [the petitioner's] presence.

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 “exemplary record of past accomplishments, beyond those inherent in the occupation” justify a waiver of the job offer requirement. Counsel observes that the petitioner's work has already had measurable results in New York and the Chesapeake Bay area, indicating the projections of future benefit are not entirely speculative.

Upon careful consideration of the materials in the record, we find that the petitioner has in fact provided independent evidence to the effect that his work is especially significant in the field. While the petitioner's initial submission relied largely on statements from individuals close to the petitioner academically or professionally, the petitioner's subsequent submissions encompass a wider segment of the petitioner's field. The letter from Dr. Keyser suggests that the petitioner's skills are actively sought out by experts in the field who are in need of innovative solutions to engineering problems.

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 engineering community recognizes the significance of this petitioner's work rather than simply the specialty as a whole. 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.