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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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ULLB, 3rd Floor
Washington, D.C. 20536

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

File: [redacted] Office: Nebraska Service Center Date: DEC 10 2002

IN RE: Petitioner: [redacted]
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:

[redacted]

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

Elizabeth Hayward

for 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 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 found that the petitioner qualifies for classification as a member of the professions holding the equivalent of 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 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.

It appears from the record that the petitioner seeks classification as an alien of exceptional ability. This issue, however, is moot. The petitioner holds a Bachelor's degree in engineering from Tri-State University. The director did not contest that the petitioner had at least five years of post-baccalaureate experience. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding the equivalent of an advanced degree. 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, 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.

The petitioner is a mechanical engineer with the TRW Systems and Information Technology Group where he works on projects contracted by the Federal Aviation Administration (FAA). Specifically, the petitioner is assigned to the National Airspace System Implementation Support Contract (NISC II) where he works on the Potomac Consolidated Terminal Radar Approach Control Facility project (TRACON). It is noted that one of the petitioner's references, Thomas Ross of the FAA field office in Warrenton, Virginia, asserts that this project was due to be completed in May 2002.

We concur with the director that the petitioner works in an area of intrinsic merit, engineering, and that the proposed benefits of his work, improved air traffic control, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

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 219, note 6.

Ashfaq Hussain, an electrical engineer with the U.S. Department of Transportation, asserts that he has previously worked with the petitioner and that the petitioner has "strong technical knowledge and understanding of Direct Digital Controls for air handling unit controls." Mr. Hussain continues that the petitioner has worked on several projects supporting the National Airspace Support System and that the petitioner's knowledge will be in high demand.

Yousef Abugosh, a civil engineer at the Federal Aviation Administration, writes:

> [The petitioner] is a mechanical engineer with extensive experience in his field and a track record of projects that have supported, and continue to support, the United States Department of Transportation's Federal Aviation Administration. His work directly affects the continuous success and safety of our air space operations. His assignments are directly related to the refurbishment and maintenance of the mechanical components of the Air Route Traffic Control Center (ARTCC) in Indianapolis. A recent project that [the petitioner] worked very hard on is engineering the replacement of a roof top HVAC unit which involved asbestos abatement.
>
> [The petitioner] is an essential member of our team of engineers; we learned to rely and depend on his professional services.

Kashif J. Khan, a fellow civil engineer at TRW Government Information Services Division, writes:

> Our assigned projects require both mine as well as [the petitioner's] coordination due to the complexity and diversity of our assigned projects and also because of our diverse professional background. I have sought [the petitioner's] expertise in Direct Digital Controls for air handling unit controls, HVAC units and various other processes that require a sound knowledge in the field of mechanical engineering. Development of bid packages for various projects for the FAA require constant interactions with client and other private parties to configure proposal to satisfy the safety and code requirements of the FAA and other governing authorities. Both [the petitioner] and I develop bid packages for various projects for the FAA. We coordinate in developing capitalization and cost estimates of materials, workman hours, labor cost, cost of equipment and other financial related issues to prepare a comprehensive bid package, which FAA uses to benchmark their budget.
>
> [The petitioner] is a crucial member of the NISC team located in Indianapolis.

> His professional experience and expertise of multiple fields in mechanical engineering supplements our goal of upgrading ground systems' facilities for the FAA. These facilities play an integral part in monitoring aircrafts enroute to their respective destinations and thus play a very crucial role in air safety.

In response to the director's request for additional documentation, the petitioner submitted more letters. Mr. Ross asserts that the petitioner is an integral member of the Potomac Consolidated TRACON team with experience in the design and installation of mechanical systems and essential management skills. Anton Mascolo, a civil engineer for the FAA in Warrenton, asserts that he cannot personally vouch for the petitioner's prior job experience, but that the petitioner's experience at the Indianapolis Air Route Traffic Control Center (ARTCC) and the Virginia Air Traffic Control System Command Center (ATCSCC) was an important consideration in transferring the petitioner to work on the Potomac Consolidated TRACON project. Daniel J. Hamilton, Task Order Manager for the TRW, and Michelle M. Steinfeld, Human Resources Manager for the NISC II program at TRW, provide similar information.

In an unsigned letter, the petitioner argues that TRW already obtained a labor certification from the Department of Labor for the Indianapolis region before transferring him to Virginia, although the petitioner also readily concedes that "there are plenty of well-experienced engineers" in Virginia. The petitioner further argues that the labor certification process would take longer than the temporary project to which he is assigned. Finally, as evidence of his past record of accomplishments, the petitioner references his ten years of experience in the field and specific evidence with FAA related projects.

The director concluded that the petitioner had not demonstrated a track record of significant accomplishments that would justify projections of future benefits, noting that national interest waivers are not justified on the basis of the importance of the job alone.

On appeal, counsel argues that the final prong of *Matter of New York State Dept. of Transportation*, *supra*, is met since the petitioner's employer previously obtained a labor certification on behalf of the petitioner in a different region. Thus, there is no countervailing interest in protecting jobs for available U.S. workers since there are no such workers with the necessary qualifications. Even if we accepted that the labor certification in Indianapolis was evidence that a labor certification would be easily obtained for Virginia, the fact that TRW is able to obtain a labor certification for the petitioner is not a persuasive argument that such a requirement should be waived. If anything, it demonstrates how unnecessary the waiver request is. As stated in *Matter of New York State Dept. of Transportation, supra*, at 223, nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process.

On appeal, while counsel reiterates that the petitioner has experience with FAA contracts, counsel does not address the director's concern that the petitioner has not demonstrated a track record with some degree of influence on the field as a whole. We concur with the director.

While we do not question that the petitioner has become familiar with FAA projects through his work experience, the record contains no letters from independent experts in the field attesting to the petitioner's contributions to the field as a whole. The petitioner has not provided any letters from high-level officials at the FAA regarding that agency's official opinion on the petitioner's importance. Even the letters from the petitioner's immediate circle of colleagues focus more on the significance of the projects on which the petitioner has worked than on his individual contributions to those projects.

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.