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U.S. Department of Justice  
Immigration and Naturalization Service

**PUBLIC COPY**

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



File: [Redacted] Office: TEXAS SERVICE CENTER

Date: 16 DEC 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:  
[Redacted]

**identifying data deleted to  
prevent identity misappropriation  
invasion of personal privacy**

**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 CFR 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 CFR 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, Texas 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 holding an advanced degree. The petitioner seeks employment as an environmental engineering consultant/project manager. At the time of filing, the petitioner was an asbestos survey senior technical professional at Professional Service Industries, Inc. ("PSI"). 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 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.

(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 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.

The application for a national interest waiver cannot be approved. The regulation at 8 CFR 204.5(k)(4)(ii) states, in pertinent part, "[t]o apply for the [national interest] exemption, the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate." The record does not contain this document, and therefore, by regulation, the petitioner has not properly applied for a waiver of the job offer requirement. The director did not mention this deficiency in the notice of decision. Discussion follows regarding the merits of the petitioner's application for a national interest waiver.

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 describes his work:

With my specialized background in environmental engineering, and unique work and research experience in asbestos and lead-based paint related projects, I can continue to make a positive contribution and play a major role towards protecting and promoting the physical and environmental health of people in schools, federal establishments, and public buildings at the very least. Identifying and controlling these carcinogens through the application of sophisticated procedures, testing and analysis will protect the public from unnecessary exposure to asbestos and lead in workplaces, buildings and schools.

Along with background documentation pertaining to the hazards of asbestos and lead paint, the petitioner submits several witness letters. Dr. Carlos Ferregut, chairman of the Department of

Civil Engineering at the University of Texas, El Paso, describes the petitioner's graduate studies at that institution. Dr. Ferregut states:

In his thesis . . . [the petitioner] studied the mechanisms of crack formation in soils, and came up with a geometric characterization of crack fabrics from existing data in the technical literature. . . . This analysis provided a probabilistic description of crack fabrics that could be used in the analysis of risks posed by cracks in soils to the propagation of hazardous substances into the environment. The problem that he solved is of great importance to the programs dealing with environmental management of the arid regions of the USA.

Thomas J. Hruby, district manager at PSI, supervised the petitioner's work on several "key projects" such as "asbestos and lead-based surveys for several post offices throughout Texas" and asbestos abatement projects at several Texas school districts. Mr. Hruby states that the petitioner is "specially qualified and valuable to our company. His background in civil engineering and experience in the asbestos and lead-based paint areas will be very useful in efficiently working on several asbestos related projects and improving the environment in which we live." Several other witnesses discuss the petitioner's work on the projects mentioned by Mr. Hruby. These witnesses are PSI employees, school district officials, and others involved with those projects.

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 additional documentation regarding his employer and his educational background. The petitioner also submits additional letters. Chad Bedwell, environmental department manager for PSI, offers general assertions regarding the hazards of lead-based paint and asbestos and the duties of individual asbestos consultants such as the petitioner. All of these comments are general to the petitioner's field. Pursuant to *Matter of New York State Dept. of Transportation, supra*, an alien cannot establish qualification for a national interest waiver based on the importance of his or her occupation. It is the position of the Service to grant national interest waivers on a case-by-case basis, rather than to establish blanket waivers for entire fields of endeavor.<sup>1</sup>

Mr. Bedwell asserts that the labor certification process could interfere with the petitioner's continued availability, but he does not explain what distinguishes the petitioner from others in his field. Mr. Bedwell discusses the petitioner's master's thesis but he does not indicate the applicability of the petitioner's findings to his current work in lead-based paint and asbestos abatement.

Michelle Linn, environmental coordinator for the Fort Worth Independent School District, states "[b]y ensuring our asbestos abatement are [sic] started and completed in compliance with applicable state and federal regulations, [the petitioner] will help make our schools a safe working

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<sup>1</sup> Section 203(b)(2)(B)(ii) contains an exception to this policy, enacted after the publication of *Matter of New York State Dept. of Transportation*. This exception applies only to certain physicians and is not relevant in this proceeding.

and learning environment.” It would appear that ensuring such compliance would be a basic responsibility of any licensed individual asbestos consultant. Here again, the emphasis is on the undeniable importance of asbestos and lead-based paint abatement, rather than on any contributions that distinguish the petitioner from other qualified workers in the same occupation.

The director denied the petition, acknowledging the importance of the petitioner’s occupation 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. The director stated “[t]he issue in this case is not whether asbestos removal is in the national interest, but whether the petitioner, to a greater extent than U.S. workers having the same qualifications, plays a significant role in this removal process. The record does not indicate that he plays a significant role in this field.”

On appeal, counsel states “key evidence may have been overlooked” which shows that the petitioner “possesses an extremely unique background of education, experience, and research” which could never be accurately reflected on an application for labor certification. The record, however, does not establish that the petitioner has made unusually significant contributions to the field of asbestos and lead-based paint abatement. The overall importance of the petitioner’s chosen field is not automatic grounds for a waiver. Simply listing the petitioner’s past projects does not show that such projects are beyond the capabilities of most U.S. engineers in the same specialty, or that the petitioner’s impact has otherwise been especially significant. While some witnesses have speculated about the potential impact of the petitioner’s master’s thesis, the record is silent as to what impact that thesis has actually had. Some degree of research is a virtually universal requirement among graduate students; the record does not show that the petitioner has conducted any research that was not necessary for the completion of his master’s degree. The record, for the most part, stresses the importance of the petitioner’s occupation rather than the role he has played in that occupation.

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.