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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 99 069 52140 Office: Vermont Service Center Date: 14 FEB 2004

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]

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 an alien of exceptional ability. The petitioner seeks employment as an environmental engineering consultant. 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 petitioner claims eligibility as an alien of exceptional ability. The director found that the petitioner qualifies as a member of the professions holding an advanced degree. Given this finding, an additional finding of exceptional ability would be of no further benefit to the petitioner. 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.

Counsel states that the petitioner "plans to start his own consulting firm and laboratory on a full-time permanent basis to help American companies with environmental risk analysis and compliance with federal and state standards for water purity." Counsel contends that the petitioner's "knowledge is rare and unique and there are few if any experts of his caliber in the world," and that the petitioner's "unique solutions have already earned him an outstanding reputation."

The petitioner submits background documentation pertaining to clean water standards and other environmental concerns. This material

establishes the intrinsic merit of the petitioner's activities but does not show that the activities of one engineer have (or will have) national scope, nor does it address the specific merits of this petitioner's work relative to that of other qualified engineers and engineering consultants. To establish these points we turn to more specific evidence.

The petitioner submits several witness letters. [REDACTED] Bolotin, currently a group leader of Drug Delivery Development at Endorex, states:

I [have known the petitioner] since 1994 when he worked as a senior engineer at TAHAL CONSULTING ENGINEERS LTD. (Israel). At that time I was working as a Manager of Research and Development at Ecomind . . . in Israel. My scientific and professional interests are in the area of medical and non-medical applications of liposomes - tiny fatty vesicles. One of the properties of liposomes is the ability to aggregate the oil spills, simplifying the cleaning of oil, for example, from the ocean surface after a tanker crash. Being well familiar with the chemistry of the aggregation [of] oil by liposomes, I needed to be consulted by a good ecological engineer, to learn the full picture of the cleaning process, including machinery. Fortunately we met with [the petitioner], who . . . explained to me a lot about the process and problems. . . .

A good mix of theoretical and practical backgrounds, strong project leadership skills and hands-on experience allow[ed] him, in a short time, to take a leading role in the most prestigious design company in Israel.

[REDACTED] Jerusalem branch manager of Tahal Consulting Engineers Ltd., states that the petitioner played a "leading role in the design, development and inculcation" of "domestic and international projects" for national and international clients such as the World Bank and the Environmental Protection Agencies of Venezuela and Turkey.

[REDACTED] deputy to the general director of Maya Substructures Ltd., states that his company, "an environmental services and engineering consulting firm . . . collaborated with [the petitioner] for 4 years." [REDACTED] asserts that the petitioner's expertise allowed the firm to "complete three gigantic Computerized Mapping and GIS Application designs," and that the petitioner's "most important and valuable contribution . . . was developing and implementing the unique innovative technique directed to fight uncontrolled waste of the water caused by the existing system."

[REDACTED] a Jerusalem-based consulting engineer, states that the petitioner earned a "wide famed reputation" for innovations such as

his "design of the emergency water pool network which is saving water necessary for supplying whole cities and settlements, which detects the quality and chemical composition of the water. [The petitioner] developed a huge part of the project himself including Jerusalem city and central Israel areas." Other individuals corroborate the assertion that the petitioner has made significant contributions to engineering concerns regarding Jerusalem's water supply.

██████████ president of Bruning Paint Company (which employed the petitioner at the time of filing), states that the petitioner "has actually eliminated any 'off site' waste water and hazardous waste" from the company's plant, recovering 22,000 gallons of "wash water" per year.

Other witnesses who have worked with the petitioner (in Israel, for the most part) attest to the petitioner's talent in solving water and wastewater engineering problems. One witness who knows the petitioner's work only from the petitioner's resume is ██████████

██████████ Eastern Shore Regional representative of the Air and Radiation Management Administration of Maryland's Department of the Environment. ██████████ states "I have reviewed this resume and [the petitioner] has an impressive list of credentials. Individuals with [the petitioner's] training could be beneficial employees at many municipal water/waste water treatment plants, as well as many industrial facilities which generate and process waste water."

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 further witness letters, additional documents, and arguments from counsel. Counsel states that the petitioner's work is national in scope because newly promulgated Environmental Protection Agency regulations are national in scope and "all companies will be required to meet these standards" as they take effect. This argument makes two unproven assumptions: (1) the regulations are so stringent that most companies would be unable to meet them without the assistance of the petitioner (as opposed to other qualified environmental engineers), and (2) the petitioner's work with individual companies will have a cumulative effect that is significant at a national level.

Jay Bozman, in his second letter, states:

[The petitioner] has published engineering research and scientific works in the field of new technologies of reverse osmosis system and water filtration . . . [and] he has successfully completed new experimental projects in bioreactions technology. . . . [H]e is the creator of a unique system for controlling, managing and designing of

water/wastewater networks and constructions . . . and different computer programs and software. . . .

There are no other similarly trained Americans who could get these results. . . . [H]is ingenious new methods of dealing with wash water is in use and has prevented any off site waste water and hazardous waste generated by the operations at Bruning Paint Company. . . .

[The petitioner's] impact will be national in scope. [The petitioner's] work will reach all areas of the United States . . . because his experience and new technologies can be utilized, with some adaptation, in other metropolitan areas throughout the United States that face similar industrial wastewater treatment problems.

Also offering praise for the petitioner's skills are witnesses from Du Pont, Dow Chemical Company, Exxon Chemical Company, Ford Motor Company, and other major corporations, professional associations, and other entities.

The director denied the petition, acknowledging the intrinsic merit and national scope of the petitioner's work but finding that "[t]he record does not demonstrate that" the petitioner has "developed new and original methods which have been widely adopted by other engineers."

Counsel, on appeal, argues that the petitioner has submitted numerous letters from expert witnesses to establish that the petitioner has had a substantial impact in his field. The witnesses indicate that the petitioner has made major contributions to environmental engineering in Ukraine and Israel, and is poised to make similarly significant contributions in the United States, beginning with the petitioner's elimination of off-site waste water at the Bruning plant. While some of these individuals have long-standing ties to the petitioner, there is no indication that they all do. Rather, the record indicates that the petitioner has earned a significant reputation as a respected innovator in his field, and this reputation is not limited to a particular geographical area of the United States. The letters point toward a consensus in the field that the petitioner's abilities are such that he is consistently able to perform at a level beyond the capabilities of most, with national implications beyond a single given project.

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 occupation in general. Their citation of specific projects of demonstrable significance shows that expectations of future benefit are not mere speculation based on subjective impressions or academic performance outside of a "real-world" setting. The benefit of retaining this alien's services outweighs the national interest which 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.