



Surviving visa related to prevent clearly unwarranted invasion of personal privacy

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U.S. Department of Justice  
Immigration and Naturalization Service

Identifying visa related to prevent clearly unwarranted invasion of personal privacy

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

[Redacted]

File: [Redacted] Office: Texas Service Center

Date: 22 FEB 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]

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*  
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 and as an alien of exceptional ability. The petitioner seeks employment as a certified public accountant. 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 holds the foreign equivalent of a bachelor's degree in Business Administration with specialization in Accounting and has demonstrated over five years of progressive experience in the specialty. The petitioner's occupation of accountant falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions with post-baccalaureate experience equivalent to an advanced degree. The petitioner also claims eligibility as an alien of exceptional ability. Because he qualifies as an advanced-degree professional, however, an additional finding of exceptional ability would be of no further benefit to the petitioner. 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, 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.

An alien seeking a national interest waiver must present a national benefit so great as to outweigh the national interest inherent in the labor certification process. Stated another way, the petitioner 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 cannot suffice to state that the alien possesses useful skills, or a "unique background." As noted previously, regardless of the alien's particular experience or skills, even assuming they are unique, the benefit the alien's skills or background will provide to the United States must also considerably outweigh the inherent national interest in protecting U.S. workers through the labor certification process. Likewise, it cannot be argued that an alien qualifies for a national interest waiver simply by virtue of playing an important role in a given project, if such a role could be filled by a competent and available U.S. worker. The alien must clearly present a significant benefit to the field of endeavor.

The petitioner has been licensed to practice as public accountant in Texas since 1987. The petitioner has submitted evidence of his membership in several professional associations; including the National Association of Certified Fraud Examiners, American Management

Association, Texas Society of Certified Public Accountants, and Institute of Internal Auditors. He has demonstrated professional experience in public accounting, corporate accounting, internal auditing, and cost accounting. The petitioner's membership in various associations and experience in accounting, however, is insufficient to demonstrate eligibility for the national interest waiver. Because, by statute, exceptional ability is not by itself sufficient cause for a national interest waiver, the benefit that the petitioner presents to his field of endeavor must greatly exceed the "achievements and significant contributions" contemplated in the regulation at 8 C.F.R. 204.5(k)(3)(ii)(F). The petitioner has demonstrated his experience in the accounting field, but he has not shown significant achievements and contributions setting him apart from others in the field. The petitioner has offered no evidence that his accounting methods have attracted the attention of other certified public accountants or that he has influenced the development of generally accepted accounting principles.

The petitioner provides testimonial letters from various acquaintances. [REDACTED] Dean, Faculty of Commerce, at the University of Poona, states: "He has a distinguished college career and did well on all his examinations." University study, however, is not a field of endeavor, but, rather, training for future employment in a field of endeavor. Academic accomplishments as a student do not reflect achievement in one's field. [REDACTED] of the Houston Chapter of the Institute for Internal Auditors describes the petitioner as "a very conscientious member of this organization who frequently volunteers to contribute to its success." He adds: "[The petitioner] demonstrates an avid interest in professionalism and self improvement by his frequent attendance at continuing education seminars which the I.I.A. sponsors." [REDACTED] the Director of Volunteer Services at M. D. Anderson Hospital, states that she has known the petitioner for eight months through his volunteer work in the Patient/Family Education program. [REDACTED] Taxpayer Education Coordinator for the Houston District of the Internal Revenue Service, states that the petitioner has assisted the Volunteer Income Tax Assistance program for ten years. [REDACTED] credits the petitioner as being "the only C.P.A. volunteer who has taken steps to increase tax compliance in the Houston ethnic community." The letters from his fellow association members and volunteer groups essentially limit the petitioner's impact to the Houston area. It should be noted that the Service is not questioning the credibility of the petitioner's witnesses, but looking for evidence that the petitioner's work has impacted the accounting field beyond his local community.

The wealth of the evidence submitted, including three of the letters mentioned above, relates to the petitioner's services as a volunteer. However, eligibility for the national interest waiver requires the petitioner to clearly present a significant benefit to his "field of endeavor." The petitioner is requesting an employment-based visa as a certified public accountant. Volunteer work outside of his employment cannot be considered when determining whether his employment duties serve the national interest. The petitioner has volunteered his services to the United Way, Internal Revenue Service, Refugee Services Alliance, SeniorCom, M. D. Anderson Hospital, *Voice of Asia*, *Indo-American News*, and given free computer training workshops to senior citizens. The petitioner has assisted individuals in filing their income taxes without charging them a fee. The petitioner has taught free seminars on wills and trusts, small business accounting, and Quicken/Quick Books usage. The petitioner provides evidence of several course

evaluation forms completed by his students. It could be argued that the petitioner's volunteer work is employment-related, but an accounting degree is not required in order to assist individuals with filing their tax returns. Income Tax Preparation Services, such as H&R Block, typically do not require their tax preparation specialists to be certified public accountants. Further, an accounting degree is not a requirement for teaching a basic computer class or providing internet instruction. Estate planning issues, such as wills and trusts, are often handled by lawyers, rather than accountants. It appears that many of the volunteer services provided by the petitioner could be offered by individuals not specializing in accounting.

While the attendees of the petitioner's classes may receive valuable financial advice and computer instruction, the effect is so attenuated at the national level that the petitioner's efforts cannot be said to have furthered the national interest to a significant extent. The petitioner has not demonstrated any effect at all outside the Houston area, and has not documented a substantial effect on the overall economic or educational climate in that one city. The petitioner cannot claim to have had a major effect simply because those individuals who did attend his classes have offered favorable evaluations of his abilities. The petitioner's skills as an accountant, while useful to his volunteer organizations in Houston, does not appear to represent a national interest issue.

The petitioner has written seven articles on personal finance appearing in the Houston local media; including the *Voice of Asia*, *Indo-American News*, and *The Newspaper*. The petitioner has also provided evidence of a newsletter article he wrote for the Houston Chapter of the Texas Society of Certified Public Accountants offering basic internet tips. The petitioner cannot claim a significant impact on his field from writing articles in the local media or offering internet advice. Once again, the petitioner's impact is limited to the Houston area.

The petitioner has provided a newspaper clipping from the *Voice of Asia* picturing his receipt of an award from the Internal Revenue Service for his local volunteer work. Also provided was an article from the *Voice of Asia* describing the petitioner's free computer classes for senior citizens. Additionally, the petitioner submits an article from the business section of the *Houston Chronicle* describing his volunteer work within the community through helping people file their tax returns. While the petitioner's volunteer work is commendable, and has received attention in the local press, the evidence submitted essentially limits the petitioner's impact to his local community. The national interest waiver was not instituted as a means of encouraging volunteerism or community activism. It remains that the petitioner must clearly present a significant benefit to the field of accounting.

The director denied the petition, stating that "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."

On appeal, counsel states that the Service "has not looked at the evidence presented" and "failed to provide basis for the denial." An examination of the director's decision does not support these conclusions. The director's decision provides both a discussion of the evidence and a basis for

denial. The director stated the following:

The petitioner is a self-employed certified public accountant. Counsel indicated the petitioner's role as a tax consultant benefits the United States economy and provides jobs to United States citizens. However, the petitioner, through counsel, has not established that his effect on the economy appear to be substantially greater than that of others in the field. The petitioner has not shown he has affected the industry on a national level. While the petitioner is a competent accountant whose skills and abilities are of value, it remains that carrying out the usual duties of a certified public account does not inherently serve the national interest. The petitioner has not submitted evidence to compare his effect to that of the average professional in a comparable position.

Furthermore, counsel indicated, "The petitioner is entitled to a waiver of job offer, since his activities within the community are in the National Interest of the United States." Counsel further stated, "His services are widely used by both the ethnic and local business communities in Texas." Finally, counsel stated, "[The petitioner] benefits local communities..." However, a local need does not represent a national interest issue.

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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.

Counsel states that the petitioner is entitled to a waiver of the job offer because "his professional activities" and "activities within the community" are in the national interest. The petitioner's argument throughout this proceeding has essentially relied upon the apparent assertion that he has earned an immigrant visa through his selfless volunteer work and by sharing valuable knowledge from his profession.

Much of the evidence submitted relates to the petitioner's work as a volunteer. However, the petitioner in this case seeks an employment-based visa. The petitioner's activities that are held to be in the national interest must, therefore, derive from his employment. The national interest waiver is statutorily limited to advanced degree professionals and aliens of exceptional ability. The petitioner does not explain why the volunteer work of advanced degree professionals or exceptional aliens should be rewarded with an immigration benefit (i.e., the national interest waiver), when the comparable efforts of aliens who fall outside this visa classification cannot be so recognized. The volunteer work of an accountant with an advanced degree or equivalent experience is not inherently any more valuable or beneficial than the same work performed by another volunteer with no such degree or experience. Therefore, fundamental fairness dictates that volunteer work outside of one's job duties, while admirable, cannot fairly be considered when adjudicating an application for an employment-based national interest waiver.

While the petitioner's past record need not be limited to prior work experience, he must clearly establish, in some capacity, the ability to serve the national interest to a substantially greater extent than the majority of his colleagues in the accounting profession. The Service here does not seek a qualified threshold of experience or education, but rather a past history of demonstrable achievement with some degree of influence on the field as a whole. The petitioner's uncontested expertise as an accountant and academic background do not constitute achievements and contributions having significant impact on the field of accounting. Academic performance, measured by such criteria as grade point average, or the attainment of advanced degrees from institutions with distinguished reputations, cannot alone satisfy the national interest threshold or assure substantial prospective national benefit. In all cases, the petitioner must demonstrate specific prior achievements in his field which establish his ability to benefit the national interest.

Counsel states that the petitioner's services as a certified public accountant benefit the national economy through his assistance to businesses within his state and throughout the United States. This argument generally applies to the majority of certified public accountants and does not single out the petitioner for a national interest waiver. We generally do not accept the argument that a given field of endeavor is so important that any alien qualified to work in that field must also qualify for a national interest waiver. For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. We do not dispute that the petitioner's work has been beneficial to various businesses, but the petitioner has not provided sufficient evidence of his impact on the field of accounting as a whole.

Counsel argues that the petitioner's education and training programs focus on an under-served population. Counsel refers to the letter from [REDACTED] that credits the petitioner as being "the only C.P.A. volunteer who has taken steps to increase tax compliance in the Houston ethnic community." This letter essentially limits the petitioner's impact to the Houston area. Further, the evidence regarding the petitioner's education and training programs has already been addressed.

Counsel refers to the petitioner's selection as Chairman of the Library Committee, Houston Chapter, Texas Society of Certified Public Accountants. This committee seeks to "document the history of the accounting profession in Houston" through development of a museum, printed books, video cassettes, and a web site. Again, this appointment essentially limits the petitioner's impact to the Houston area. Further, no evidence has been provided regarding the petitioner's specific accomplishments as chairman.

The petitioner has not shown that he has made accounting presentations to wider audiences, published scholarly articles regarding accounting practices, or had the means to disseminate new methods having a significant impact outside his own community activities. The evidence submitted demonstrates the petitioner's efforts as a valued community volunteer, but there is no indication that his work has impacted the accounting field beyond his activities in Houston. Thus, the petitioner has failed to demonstrate that he, as an individual, has a national impact rather than

a purely local one, or that he specifically serves the national interest to any greater extent than other certified public accountants.

At issue is whether this petitioner's contributions to the accounting profession 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. Without evidence that the petitioner has been responsible for specific significant achievements in the field of accounting, we must find that the petitioner's assertion of prospective national benefit is speculative at best.

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.