



U.S. Department of Justice  
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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Washington, D.C. 20536



**JAN 29 2002**

File: EAC 99 173 53175 Office: Vermont Service Center Date:

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: Self-represented

identification data deleted to  
prevent clearly unwarranted  
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 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 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 engineer at [REDACTED] an engineering consulting firm. 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 an M.S. degree in Civil Engineering from Syracuse University. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus 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, 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.

The petitioner states that he has "design and construction experience in the geotechnical aspects of transportation, dams, and landfill-related projects," as well as "experience in the design and construction of dams and bridges."

Along with documentation pertaining to his field of endeavor, the petitioner submits several witness letters, examples of which we discuss here. [REDACTED], vice president and manager of the Geotechnical Section of Gannett Fleming, states that transportation engineering is a crucial factor in implementing such diverse initiatives as the Clean Air Act, the Transportation Equity Act,

and the North American Free Trade Agreement. Mr. Langer states that the petitioner's "diversified work experience and strong academic background" allow the petitioner to make "very valuable contributions toward geotechnical engineering in the transportation field." [REDACTED] does not, however, describe specific projects or accomplishments.

[REDACTED], Project and Business Development manager at EMCON, states:

At EMCON I developed and patented a unique leachate treatment process that utilizes landfill gas as the energy source to evaporate landfill leachate. . . .

The pilot testing and process development work that [the petitioner] oversaw helped to both confirm and improve the performance of EMCON's patented Leachate Evaporation System (LES). Currently, EMCON has ten LES facilities operating within the United States that play an important role in protecting the environment.

[REDACTED] and not the petitioner, is clearly the driving force behind the LES project. [REDACTED] does not specify how, or to what extent, the petitioner refined the LES process. Not everyone who worked on the system had an equal impact.

The remaining witnesses have all taught or supervised the petitioner at various stages in his training and his professional career. Many of the witnesses offer only general assertions, to the effect that the petitioner (who did not yet hold his professional engineer license at the time of filing) is well-qualified to work in an important occupation. Several of the letters contain the phrase "[w]ith his diversified work experience and strong academic background, he is making, and will continue to make, very valuable contributions," or a very similar phrase differing by only one or two words (such as the substitution of "excellent" for "strong"), suggesting common authorship of at least portions of the letters.

The record contains some technical presentations and articles co-authored by the petitioner, but there is no evidence to show that these writings have been more influential than the average such writings in the petitioner's field.

The director requested further evidence that the petitioner has met the guidelines published in Matter of New York State Dept. of Transportation. The director specifically requested objective, independent evidence to establish that the petitioner's work is considerably more important than would be expected of a qualified worker in his field; the director stated that the petitioner's impact on the field is a paramount consideration. In response, the

petitioner has submitted copies of technical writings and other documents, as well as new letters.

The petitioner states that he has "been directly involved with the design and construction of dams, landfills, and bridges located in several states" throughout the country, mostly along the East Coast. The petitioner asserts that he has "provided critical review comments to the Federal and State Regulatory Agencies" and "played a key role in the U.S. Army Corps of Engineers project pertaining to the re-evaluation of seismic stability of Cochiti Dam . . . in New Mexico."

The new letters, like the initial letters, are all from individuals who have employed and/or trained the petitioner. James E. Langer, in his second letter, describes various projects with which the petitioner has been involved. [REDACTED] asserts that the petitioner's "past records of contribution in projects of various states [sic] justifies projections of future benefits to the nation." [REDACTED] contends that labor certification is not appropriate in this instance because "it is in the national interest that [the petitioner] be allowed to work for any entity, whereby, his expertise will have the greatest impact in furthering his contributions in the field of geotechnical engineering."

[REDACTED] project manager and the petitioner's immediate supervisor at Gannett Fleming, states that the petitioner "has played a key role in developing technical guidance governing the abandonment of waste impoundment dams for the Division of Dam Safety of the PADEP [Pennsylvania Department of Environmental Protection]." [REDACTED] indicates that the petitioner will present a technical paper on this work at a national conference. [REDACTED] selection of the petitioner to present the paper is an indication of [REDACTED] confidence in the petitioner's abilities, but at the time of [REDACTED] letter it was clearly too soon to gauge the industry's reaction to the petitioner's work; the petitioner had not yet even made the presentation.

[REDACTED] chief of the Environmental and Geotechnological Section at PADEP, states:

[The petitioner] has been involved in a number of on-going dam and landfill related projects, providing very important review comments on permit and closure submittals to the PADEP. . . .

[The petitioner] is also playing a key role in developing an "improved version" of the regulations governing the abandonment of waste impoundment for the Division of Dam Safety of the PADEP.

While the above activities are not insignificant, there is no indication as to how the petitioner's efforts compare with those of

other consultants in his field, whose basic duty it is to provide support and advisory opinions to clients such as PADEP.

[REDACTED] past president of the Central Pennsylvania Section of the American Society of Civil Engineers, states:

As a Geotechnical Project Manager within [REDACTED] Harrisburg, PA, I have overseen work design tasks completed by [the petitioner]. His designs are always of the utmost quality, showing thoughtfulness to every design issue. He certainly could not be replaced by a U.S. worker of the same minimum qualifications.

Other documents submitted in response to the director's request show various research projects in which the petitioner has participated, in many cases while the petitioner was a graduate student, in which capacity such research projects would appear to be a routine requirement.

The director denied the petition, stating that the petitioner has not persuasively demonstrated that his "experience and abilities set him or her apart from other highly qualified civil engineers in the field." The director noted that the letters submitted in support of the petition are primarily from individuals with close ties to the petitioner, mostly from superiors such as supervisors and professors. The director also found that the petitioner's efforts are confined to "one corner of the United States."

On appeal, the petitioner submits a considerable quantity of documents, all of which appear to be copies of previously submitted exhibits. The only new submission on appeal is a four-page statement by the petitioner, intended to rebut the stated grounds for denial.

The petitioner repeats the assertion, already established, that as an employee of a large national consulting firm, the petitioner's efforts are not restricted to a single geographic area. We acknowledge this point, and withdraw the director's finding to the contrary. The director's incorrect finding appears to have been based on the observation that all of the letters relating to the petitioner's current work are from engineers in central Pennsylvania.

To show that his past contributions justify expectations of significant future benefit to the U.S., the petitioner quotes from previously submitted letters. These letters are generally from individuals who supervised the petitioner's work on the projects discussed. There is no evidence that the petitioner's work is considered to be noteworthy by independent, objective observers.

The petitioner asserts that he "played a very critical role in the U.S. Army Corps of Engineers project pertaining to the re-evaluation of seismic stability of Cochiti Dam." The record contains nothing from the Army Corps of Engineers to distinguish the petitioner's work on this project from the work of countless other engineers and consultants with regard to work on other dams throughout the nation. All of the available information regarding this project comes from the petitioner's supervisors and collaborators.

The remainder of the appeal consists primarily of quotations from the previously discussed letters. Some of the letters focus on the overall importance of the petitioner's engineering specialty. The petitioner does not automatically merit a national interest waiver by virtue of being well qualified to work in an important field of endeavor. 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. See Matter of New York State Dept. of Transportation, supra.<sup>1</sup>

Other letters assert that the petitioner is better equipped than other engineers to handle various tasks. With regard to these assertions, a plain reading of the statute and regulations shows that aliens of exceptional ability are generally required to present a job offer with a labor certification at the time the petition is filed, and only for due cause is the job offer requirement to be waived. Clearly, exceptional ability in one's field of endeavor does not, by itself, compel the Service to grant a national interest waiver of the job offer requirement.

While the prospective employer's desire to hire talented workers is certainly understandable, the petitioner has not shown that the difference between himself and other qualified engineers is so significant that the U.S. would benefit significantly more from the petitioner's services than it would from the work of other engineers on the same projects. Simply listing the petitioner's past projects does not suffice because it offers no meaningful comparison between the petitioner's work and the projects undertaken by other engineers.

The record does not indicate that the petitioner has achieved a reputation beyond his mentors, supervisors, and some clients, or

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<sup>1</sup>While Congress has established a limited blanket waiver for certain physicians, the related provisions of law do not apply to the petitioner. Congress' legislative establishment of this blanket waiver demonstrates that such blanket waivers are not implied by the original national interest waiver clause.

that the petitioner has had, or will have, a greater positive impact on the U.S. than another engineer would have while working on the same 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.