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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

[redacted]

File: SRC-00-150-50863 / [redacted] Office: Texas Service Center Date: JUL 16 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)

Public Copy

IN BEHALF OF PETITIONER: SELF-REPRESENTED

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, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary 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 to employ the beneficiary as a plant manager / engineer. 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 beneficiary 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. --
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> > (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 beneficiary has the requisite education and experience to equal the equivalent of an advanced degree. 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 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.

The extent of the evidence submitted includes letters from the petitioner, verification of the beneficiary's educational and past work experience, and substantial financial documentation relating to the petitioner. Of this documentation, only the letters from the petitioner and a single letter from the beneficiary's past employer relate to the beneficiary's personal accomplishments in his field.

We concur with the director that the petitioner works in an area of intrinsic merit, engineering. The director next concluded that the petitioner's employment for a company with plants in three states would not produce benefits national in scope. The director also questioned whether improving the competitiveness of a U.S.-Canadian joint venture at the expense of other United States companies could be considered in the national interest.

On appeal, the petitioner argues that the threshold for this standard is low, similar to that of the "interstate commerce" rationale used by Congress for federal jurisdiction. The petitioner further states that the director erred in considering, under the second prong, whether the petitioner had established that the beneficiary, as a plant manager, was solely responsible for the petitioner's increase in employment. The petitioner argues that the beneficiary's personal accomplishments are only properly considered in the final prong. Nevertheless, the petitioner then goes on to list the beneficiary's accomplishments with the petitioner as evidence of the national scope of his work, allegedly resulting in an increase in employment in the United States and a contribution to

the national economy. Finally, the petitioner asserts that the director's conclusion that benefits to a single company at the potential expense of another are not in the national interest precludes the approval of any national interest waivers to aliens who might benefit the national economy. As support for the argument that benefiting a single company is in the national interest, the petitioner relies on non-precedent decisions by the Administrative Appeals Office (AAO) issued prior to Matter of New York State Dept. of Transportation, supra.

Matter of New York State Dept. of Transportation acknowledged that the seemingly local interest of maintaining roads and bridges in New York was in the national interest because New York roads connect the national transportation system. The AAO continued, however, that it was also significant that the record did not reflect that proper road maintenance in New York would adversely impact other regions of the country. In a footnote, the AAO cited the example of a dam that might provide electricity to one region but cut off water from another region. Similarly, it is not in the national interest to promote the interests of one company above its competitors. While competition is inherent in our economic system, it is not the Service's place to conclude that the success of one company over another is in the national interest.

In addition, we do not find the petitioner's argument that this reasoning precludes waivers in the national economic interest persuasive. One can imagine numerous means of improving the national economy without promoting one business to the detriment of its competitors. For example, an individual might develop a new manufacturing method which relieves U.S. industry from relying on an imported product, begin manufacturing products normally imported, or create a new insurance prototype which saves multiple companies significant money.[1] Assuming no benefit to an entire industry, an alien might demonstrably improve the overseas competitiveness of a U.S. company with offices or plants in several states. In such cases, however, one could expect that national expert economists would attest to the national economic importance of such benefits. In both AAO decisions submitted by the petitioner, the record contained letters from multiple business leaders beyond the alien's coworkers. In the instant case, the petitioner has not provided testimony from outside economic experts attesting to the national scope of the proposed benefits of the beneficiary's work. As such, we concur with the director that the petitioner has not established that the proposed benefits of the beneficiary's work, improved efficiency for a single Canadian-U.S. joint venture operating in three states, would be national in scope.

Finally, the director determined that the petitioner would not benefit the national interest to a greater extent than would an available U.S. worker with the same minimum qualifications. Specifically, the director concluded that the petitioner had not supported the assertions that the beneficiary, as a plant manager, had been solely responsible for the claimed expansion and increased employment at the petitioning company. On appeal, the petitioner states:

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[1] The above examples are provided to rebut the petitioner's contention that one must benefit a single company to benefit the national economy. Every case must be adjudicated on its own merits.

Firstly, from 1994 to the end of year 1998, [the beneficiary] played a crucial role in the integration and modernization of facilities located in the States of Washington and Alabama and newly acquired from [redacted] He utilized his expertise of industrial engineering to identify production problems and to develop and implement solutions to maximize efficiency and quality of finished products. He determined needs in terms of equipment and machinery and oversaw design and development of appropriate solutions in collaboration with our Research & Development unit, in Canada, the whole [sic] utilizing his extended knowledge of engineering principles, his familiarity with our corporate policies and processes as well as our R&D unit business-way and principal language (French). [The beneficiary] also conducted the installation of additional equipment developed by our R&D unit, and oversaw personnel recruitment and training to increase production capabilities. His recommendations permitted our company to achieve the highest efficiency and quality standards in the industry and to introduce ourselves as important producers of converted products. From the approximately twenty (20) workers that it employed as of 1994 [redacted] Inc. reached the horn of over one hundred and fifty (150) employees for the last financial year. Throughout this assignment, [the beneficiary] has demonstrated outstanding skills to face technological challenges and renew businesses facing financial difficulties, to the clear advantage of the U.S. economy and employment. He also demonstrated full compliance with our organization views and objectives, which has always been a gage for success within the [redacted]

As of year 1998, the [redacted] invested an additional sum of fifty-two million dollars ($52 000 000,00) in business acquisitions throughout the United States, including the acquisition of the Hamilton Hybar Plant, in Richmond, Virginia. This acquisition maintained several jobs as well as created new employment opportunities for local workers. Through this acquisition and reorganization project, [the beneficiary] was charged to develop and implement corporate group's production procedures and methods, to implement ISO 9000 and other in-house quality standards, and to increase overall production efficiency. Most particularly, his analytical reports led to the buying of additional machinery and equipment and to the employment of additional U.S. workers to fill newly created positions within our company.

On a more general point of view, this project, as led by [the beneficiary] enabled our company to increase its sales considerably through fiscal years 1998 and 1999. While every unit participated in this growth, most came from the addition of the Richmond Division. Aside from consolidating our presence in the United States, this project led to the integration of a new product line, namely ream reprographic paper packaging, while increasing our production capability in paperboard packaging for rolls of paper. With this successful acquisition, our converting sector not only strengthened its excellent geographic positioning, but

> also its position as a leading North American supplier offering one of the most complete products selections for the packaging needs of the pulp and paper industry, which clearly benefited U.S. employment and economy.
>
> Furthermore, since he began employment with [redacted] Inc., [the beneficiary] initiated efforts for extending our trade and commerce to the Canadian and European markets. In doing so, he gained particular knowledge of our foreign customers' business-ways and technical requirements, as well as established preferential business relationships which are essential to further increase our exportations to those emerging markets. His intimate familiarity with the particularities of the Canadian market and its business customs, in view of his own origins, also represented a crucial expertise to increase our exportations to this area.

The petitioner concludes that it need not establish that the beneficiary was solely responsible for achieving "national goals," but that the beneficiary will do so to a greater extent than an available U.S. worker "possessing the minimum qualifications." (Emphasis in original.)

Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). The petitioner did not submit any evidence to support the above claims. For example, the petitioner did not submit any letters from the Research and Development unit of the petitioner's parent company in Canada which allegedly benefited from the beneficiary's technical expertise. The petitioner also failed to submit letters from disinterested experts in the industry affirming that the beneficiary's recommendations to retool the acquired Hamilton Hybar plant constituted a notable accomplishment in the field, as opposed to the normal evaluation of a plant's capabilities and needs in the light of changing technology that any qualified plant manager could provide. Finally, the record contains no independent evidence that the beneficiary has been involved in securing European clients. While the voluminous financial statements support the petitioner's assertions about its own accomplishments, they do not support the beneficiary's role in those accomplishments.

Furthermore, while we agree with the petitioner that the beneficiary need not be solely responsible for all of his alleged accomplishments, at issue is whether this beneficiary's contributions in the field are of such unusual significance that the beneficiary merits the special benefit of a national interest waiver, over and above the visa classification sought. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate the beneficiary's past history of achievement with some degree of influence on the field as a whole. Id. at note 6. The record contains no evidence that the paper manufacturing industry as a whole or even the petitioner's parent company and its subsidiaries have been influenced by the beneficiary's technical expertise.

Finally, the petitioner's arguments that the labor certification process would be contrary to the national interest in this case because the beneficiary has knowledge of the petitioner's "business-

ways" and the French language is not persuasive. First, an employer cannot avoid the labor certification process simply by indoctrinating an employee in its business philosophy. Further, if necessary to the job, linguistic abilities can be listed on a labor certification application. Moreover, as stated in Matter of New York State Dept. of Transportation, supra, the inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that the self-employed alien will serve the national interest to a substantially greater degree than do others in the same field. Id. at note 5. For the above reasons, the petitioner has not met this burden.

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.