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**U.S. Department of Justice**

Immigration and Naturalization Service

identifying data deleted 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: Nebraska Service Center Date: JUL 18 2002

IN RE: Petitioner:
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)

Public Copy

IN BEHALF OF PETITIONER:

[redacted]

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, Nebraska Service Center. The petitioner filed an untimely appeal, which the director properly treated as a motion to reopen. The director denied the petition again on motion. A second untimely appeal was also treated as a motion, and was followed by a third denial. The petitioner's third appeal, this one timely filed, is now before the Associate Commissioner for Examinations. 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 an alien of exceptional ability or as a member of the professions holding an advanced degree (the petitioner has not specified which classification she seeks). The petitioner seeks employment as a horse trainer, specializing in the equestrian sport of dressage. At the time of filing, the petitioner stated that she sought employment at Victoria Station Farm in Mahtomedi, Minnesota. 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 does not qualify for classification as an alien of exceptional ability or as a member of the professions holding an advanced degree, and 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. -- 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 principal issue is whether the petitioner is a member of the professions with an advanced degree, and/or an alien of exceptional ability. The director determined that the petitioner does not qualify for either classification. We will consider each of the classifications in turn.

The Service's regulation at 8 C.F.R. 204.5(k)(3)(i) states:

> To show that the alien is a professional holding an advanced degree, the petition must be accompanied by:

(A) An official academic record showing that the alien has an United States advanced degree or a foreign equivalent degree; or

(B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

The regulation at 8 C.F.R. 204.5(k)(2) states, in pertinent part:

> *Advanced degree* means any United States academic or professional degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree.
>
> *Profession* means one of the occupations listed in section 101(a)(32) of the Act, as well as an occupation for which a United States Baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.

The petitioner's initial submission includes copies of her Russian educational records. The translation of these records indicates that the petitioner took correspondence courses in "zooengineering," including several courses relating to the care and breeding of animals, especially horses. While this education relates to horses, there is no evidence that the sport of dressage requires at least a bachelor's degree and thereby qualifies as a profession. Indeed, the record shows that the petitioner began formal training in dressage at the age of thirteen.

The record does not indicate that the petitioner holds any actual degree, let alone a degree higher than the equivalent of a U.S. baccalaureate, or that her intended occupation as a horse trainer is a profession requiring a bachelor's degree. Post-baccalaureate experience equating to a master's degree cannot show that a baccalaureate is the minimum requirement for entry into the occupation. The petitioner has not established that she is a member of the professions holding an advanced degree or its equivalent. In three appeals, the petitioner has never contested this finding by the director.

Because the petitioner is not an advanced-degree professional, she cannot receive a visa under the classification sought unless she qualifies as an alien of exceptional ability. The regulation at 8 C.F.R. 204.5(k)(3)(ii) sets forth six criteria, at least three of which an alien must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business. These criteria follow below. We note that the petitioner has not specified which of the criteria she claims to have met. Where possible, we have classified specific exhibits according to the criteria to which they most closely pertain.

*An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability.*

As noted above, the petitioner took five years of correspondence courses in animal science. An independent evaluation in the record states that the petitioner's study is equivalent to "four years of university study," but the evaluation does not indicate that the petitioner holds an actual degree, diploma or certificate. While the petitioner's education has some relevance to the care of horses, the petitioner's translated transcript does not reveal any coursework pertaining to training in general, let alone to dressage. The petitioner, at the age of sixteen, completed a three-year dressage riding training program, but she has not established that such training is unusual among dressage trainers (which it must be if it is to reflect a degree of expertise significantly above that normally encountered in the field).

*Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought.*

The petitioner's [redacted] a work record issued by the then-Soviet government, shows sporadic employment in various horse training-related positions beginning in 1984, but the available evidence does not establish at least ten years of full-time experience as of the petition's March 1997 filing date.

*A license to practice the profession or certification for a particular profession or occupation.*

An article in *Dressage Today*, reporting that Victoria Station Farm had recently hired the petitioner, refers to the petitioner as "a Russian Master's Licensed Trainer." The record does not contain a copy of the actual license nor any direct documentation from the licensing authority to establish the requirements that one must meet for licensure, the date when the petitioner obtained the license, or other potentially material information.

*Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability.*

*Evidence of membership in professional associations.*

The record contains no evidence pertaining to the above two criteria.

*Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.*

The record contains documentation showing that the petitioner has worked for prestigious stables, but there is no evidence that the petitioner has been recognized or singled out as an exceptional trainer. The reputation of her employers is not evidence of her own exceptional ability.

The petitioner has submitted evidence regarding shows that have taken place after March 1997. This evidence cannot retroactively establish that the petitioner was already eligible for the benefit sought as of the petition's March 1997 filing date. See Matter of Katigbak, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

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. This issue is moot, because the petitioner has not established eligibility under the classification sought, and the director has not addressed this issue in any great detail. The director has simply observed that the petitioner has not shown why it is in the national interest to waive the job offer/labor certification requirement that normally attaches to the visa classification that the petitioner has chosen to seek.

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.

The petitioner has submitted letters from former riding students and other observers, attesting to the petitioner's skill as a trainer, but the petitioner has never shown why it is in the national interest to waive the job offer/labor certification requirement in this proceeding. The petitioner has simply described her past career and her future plans, with no explanation as to how her activities as a horse trainer are of significantly greater benefit to the United States than the activities of other qualified trainers.

The record indicates that the petitioner lef[redacted] shortly after filing her petition in March 1997. A letter dated February 18, 1998, indicates that the petitioner "has been teaching and showing Dressage at Shadow Creek Stables since last spring," i.e. spring 1997. After teaching for

roughly a year at Blue Chip Farm in Hood River, Oregon, the petitioner changed employers again in March 1999, moving to Foal's Paradise Farm in Ephrata, Pennsylvania. More recently, Service records indicate that Health First Center, Downingtown, Pennsylvania, filed another immigrant visa petition on the petitioner's behalf. This petition was approved. It is not immediately apparent that Health First Center (the president of which is a doctor) is involved in any way with dressage or with horse training. This information suggests that the petitioner may have abandoned dressage training as an occupation, thereby negating any benefit that the U.S. would have gained from the petitioner's work as a trainer.

In her most recent appeal statement, the petitioner notes her then-current employment with Foal's Paradise Farms and states that this employment overcomes the lack of a job offer, which the petitioner cites as one of the grounds for denial. This job offer was not in place at the time of filing. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. See Matter of Izumii, I.D. 3360 (Assoc. Comm., Examinations, July 13, 1998), and Matter of Katigbak, supra.

For a job offer to negate the need for a national interest waiver, the petition must be filed by the employer rather than by the alien beneficiary. The petition must also be accompanied by a previously approved individual labor certification. The 1999 employment offer from Foal's Paradise Farms does not fulfill these criteria because there is no labor certification in the record and the farm did not file the petition. Also, as noted above, yet another employer appears to have since filed a petition on the alien's behalf, suggesting that the petitioner has left or intends to leave Foal's Paradise Farms.

Despite having filed three separate appeals over the course of this proceeding, the petitioner has not directly addressed the grounds underlying the repeated denials of the petition. The appeal documentation consists largely of praise from former students and employment letters from different farms, reflecting the petitioner's apparently annual changes of employment.

The petitioner's most recent appeal was filed on March 16, 1999. At that time, the petitioner did not indicate that any further brief or evidence was forthcoming, or that she would need additional time to prepare such a submission. Over 19 months later, on October 30, 2000, counsel notified the Service of his representation of the petitioner. Counsel states "[k]indly send me a copy of the entire file in your offices so I may proceed accordingly. If acceptable to you, please grant an extension in which to submit evidence and discussion of the facts regarding [the petitioner's] eligibility for approval for sixty (60) days after I receive the file."

We will refer the file to the Freedom of Information Act (FOIA) Unit to prepare and supply the requested copy of the record. At this late date, however, we cannot allow counsel's request to suspend the adjudication of the appeal. There is no regulation that allows the petitioner an open-ended or indefinite period in which to supplement a previously-filed appeal. Indeed, the existence of 8 C.F.R. 103.3(a)(2)(vii), which requires a petitioner to request, in writing, additional time to submit a brief, demonstrates that the late submission of supplements to the appeal is a privilege rather than a right. Any consideration at all given to such untimely

submissions, which are not preceded by timely requests for an extension, is discretionary. The regulation also requires "good cause" for any extension.

In this instance, the petitioner was given an opportunity to request additional time but did not indicate at that time that any extension was necessary or that any further material would be forthcoming. The appearance of a new attorney over a year and a half later does not open a new window of opportunity to supplement the record, nor does the hiring of new counsel automatically represent good cause for an extension. To hold otherwise would allow an alien to forestall a final decision indefinitely, simply by repeatedly changing attorneys and having each new attorney request yet another extension. The petitioner has been granted ample opportunity to address and overcome the stated grounds for denial, and she has failed to do so on multiple occasions. While counsel has the right to request a copy of the record, we are not compelled at this very late date to suspend the adjudication of the appeal in order to accommodate the submission of a brief and evidence which, for whatever reason, the petitioner did not choose to submit during the first five years of this proceeding.

The petitioner has established that she is a qualified and experienced horse trainer. She has not, however, shown that her occupation is a profession, or that she holds an advanced degree or its equivalent. The petitioner has also not shown why she qualifies for a waiver of the job offer/labor certification requirement which normally applies to horse trainers, but the waiver issue is moot in any case if the petitioner has not established eligibility for the underlying visa classification.

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.