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U.S. Department of Justice
Immigration and Naturalization Service

*blatant data related to
proves clearly unwarranted
decision of personal interest*

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



File: WAC-98-219-53087 Office: California Service Center Date: 12 MAR 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: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 which 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, California 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 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.

On appeal, the petitioner questions whether the director considered subsequently submitted documentation. We will consider all the documentation in the record on appeal.

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 a Master's degree in computer information systems from Arizona State 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 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.

Much of evidence submitted after the petitioner filed his petition is not relevant to his eligibility at the time of filing. For example, the petitioner submitted a certificate verifying his election as a senior member in IEEE, a grade obtained by only eight percent of members in IEEE. The letter accompanying this certificate indicates senior grade requires "experience reflecting professional maturity and significant professional achievements." This election, however, occurred after the petitioner filed the petition. Similarly, the petitioner authored an article published in *The Journal of Data Warehousing* in Spring 1999, after the petition was filed. As it was not published until after the petitioner filed his petition, it cannot have influenced the industry prior to the date of filing.

Additionally, the petitioner also submitted an article in *Lynx Newsletter*, the official newsletter of the Institute of Electrical and Electronics Engineers, Inc. (IEEE) Orange County section. The article announces an upcoming presentation by the petitioner, describing him as follows:

[The petitioner] has been working with information systems based on relational databases for the past twelve years. During the last six years he has led the development of decision support systems, data marts and data warehouses for banks, investment and brokerage houses and hospitals. Most recently as the

Manager of the Data Warehouse at HNC Software, Inc. formerly Risk Data Corporation, he led the development of one of the largest data warehouses of workers' compensation claims in the US. Prior to joining Risk Data Corporation [the petitioner] was working at the UCLA Medical Center as the Manager of Client/Server Projects. At the UCLA Medical Center he implemented an electronic data interface and a data warehouse for patients.

IEEE gave the petitioner a certificate of appreciation for this presentation which he gave after he filed the petition.

Finally, the petitioner has submitted evidence that he was hired by Perotsystems as a senior specialist in October 1998 and that his salary at that company is well above average. The petitioner, however, was hired there two months after the petition was filed.

The above evidence all relates to events which took place after the petitioner filed the petition. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971). Moreover, the evidence mostly addresses the criteria for aliens of exceptional ability, a classification that normally requires a labor certification. As the petitioner qualifies as a professional with the equivalent of an advanced degree, he has already established that he is eligible for the classification he seeks. At issue is whether this petitioner's contributions in the field 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.

The petitioner also submitted a certificate verifying his membership in Mensa. Mensa is a group whose members must meet certain IQ requirements. Regardless of whether IQ may be related to job performance, membership in Mensa is not evidence that one has contributed to one's field as a whole. The petitioner also submitted another article in *Lynx Newsletter* where the petitioner calls for the creation of a local Software Engineering Technical Society to share and disseminate information about emerging technologies. He requests that others interested in such a society contact him personally. This interest in forming a local society does not reflect on the petitioner's past contributions to his field.

Finally, the petitioner further submitted evidence regarding the importance of worker safety. As the petitioner is no longer working on databases for workers' compensation issues, the argument that he will benefit the national interest by improving worker safety is no longer persuasive. Nevertheless, based on the remaining evidence, we concur with the director that the petitioner works in an area of intrinsic merit, software and database design. The director then concluded that the petitioner had not established that the proposed benefits of his work, improved databases, would be national in scope. The record reflects that at least two of the petitioner's software systems and databases have been licensed for national distribution. As such, we conclude that the impact of his work can be national in scope.

It remains, then, to determine whether the petitioner has established that he will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. Matter of New York State Dept. of Transportation, supra, note 6.

Mark Hammond, former president and CEO of Risk Data Corporation, asserts that the petitioner developed and designed databases for two workers' compensation software products: CompCompare and ProviderCompare. CompCompare contains information about workers' compensation claims and is one of the largest in the United States. ProviderCompare contains cost and effectiveness information about treatment of injuries to workers. Mr. Hammond continues:

[The petitioner] developed another 'virtual peer' database that allowed insurance agencies to compare and benchmark workers' compensation costs of employers. This would allow insurance agencies and state funds to determine if an employers' workers' compensation costs for claims in a job classification under a given Standard Industrial Classification (SIC) code are above or below the national/state average. This database was a complex implementation issue in view of the large number of statistical validity and reliability requirements that had to be satisfied. [The petitioner] displayed extra-ordinary [sic] competence in implementing the database and achieved these goals as per our schedule.

The CompCompare workers' compensation database developed by [the petitioner] at Risk Data Corporation allows insurance carriers and state funds to compare their claims against the average in the industry. Insurance carriers and employers can drill down into the reasons for the cost of claims by nature of injury, cause of accident, date of injury, return to work date, state of jurisdiction, and more than 80 similar attributes. Insurance agencies advise employers about suitable safety steps for reducing the cost of workers' compensation claims using this information.

Mr. Hammond indicates that the above databases are being utilized by ITT Hartford Insurance, March & McLennan, Inc., Sedgwick James, CNA Insurance, Kemper Insurance, Pennsylvania Manufacturers' Association, Great American Insurance as well as state funds in Ohio, Wyoming, Utah, Louisiana, and Maine.

Vincent J. Bianco, another founder of Risk Data Corporation, reiterates much of the above information, asserting:

The maintenance of such large databases requires very deep understanding of the theoretical concepts of relational databases management systems (RDBMS) and

[the petitioner] is one of those few exceptional individuals who understand the relational theory and can develop applications on that knowledge.

Joel B. Brodsky, Vice President of HNC Software, Inc. (formerly Risk Data Corporation), asserts:

[The petitioner] is one of those few, who have the capability to act upon and implement the theoretical understanding of the concepts of data warehousing to real life applications and impact peoples' lives in positive ways.

...

As a Database Manager, [the petitioner] serves as a technical expert in the development and implementation of databases. He prepares the design of conceptual database schema, database storage structure definition and resolves database performance issues. He has demonstrated a very high caliber of knowledge in the design, implementation and maintenance of large relational databases in a state-of-art computer environment and in translating the requirements from workers' compensation insurance carriers into functional databases.

On appeal, Sean Downs, Senior Vice President of HNC writes:

[The petitioner] played the leading and critical role in the implementation of the data warehouse of workers' compensation claims at the Risk Data Corporation, which later became the insurance division of HNC Software, Inc. This data warehouse is considered one of the largest such data warehouses in the US. He distinguished himself by his capacity to innovate and implement solutions. [The petitioner] designed the architecture of our products and implemented them.

Alex Dionysian, Vice President of Development at HNC writes:

Another one of [the] significant achievements of [the petitioner's] was the development of the multi-threaded architecture for ProviderCompare updates. Multi-threaded architecture of database updates distributes work evenly on all the processors available in symmetric multi-processor (SMP) server environment. This allowed to [sic] speed-up database updates by a factor of 20 and made it possible to maintain [a] large-scale data center for the workers' compensation insurance industry.

Initially, the petitioner submitted an article printed in *Underwriter's Report* discussing MIRA, a major database developed by Risk Data Corporation released in 1991, five years before the petitioner joined the company. Thus, this article is not evidence of the petitioner's contribution. An article printed in *Insurance Accountant* discusses Risk Data Corporation's database to track

insurance fraud, the Claimant Fraud Detection System (CFDS). The record contains no evidence that the petitioner was involved in the development of CFDS.

The above letters are all from colleagues and collaborators. While such letters are useful in detailing the petitioner's role in various projects, they cannot by themselves establish that the petitioner's work has been influential outside his immediate circle of colleagues.

On appeal, the petitioner submitted September 1999 and October 1999 press releases regarding the licensing agreement between The National Council on Compensation Insurance, Inc. (NCCI) and HNC for CompCompare and ProviderCompare. NCCI supplies software for 35 states. One of the press releases, however, indicates that the decision whether or not to use CompCompare and ProviderCompare will be the member company's. The record contains no letters from NCCI or its member companies now using the petitioner's software databases. As such, the record contains no independent evaluation of the petitioner's work.

Subsequently, the petitioner submitted additional letters. Dr. J. Michael McCoy, Chief Information Officer at UCLA Healthcare, writes:

While working as the Manager of the Client/Server Technology Team in the Medical Center Computing Services department, [the petitioner] played a leading and critical role in several projects, which were mission-critical for the UCLA Medical Enterprise. One of these projects was to implement an electronic data interface (EDI) between multiple facilities of the Medical Center, i.e., pathology, medical laboratories and clinics. He also played a leading role in the development and maintenance of systems that provided information about organ transplants and managed the documentation services. [The petitioner] also led the implementation and maintenance of UNIX networks that formed the backbone of our Intranet and Internet services and developed a repository for patient related information. Some of his other achievements related to the development of the architecture of the contracts system that was rolled out on about 100 workstations at the Medical Center. He distinguished himself by his capacit[y] to innovate and implement leading-edge solutions to business issues faced by the Medical Center for improvement in healthcare services. An example is the development of the interfaces between database servers and EDI.

A 1996 letter indicates that the petitioner's team won the UCLA "Partners in Excellence" (PIE) Award. The remainder of the letter indicates that the award was based on the completion of goals set for the team. Ebrahim Vaahedi, a fellow of the IEEE, provides an "advisory opinion" based on his review of the petitioner's credentials. For the most part, he simply recounts the information already in the record. He also asserts that the petitioner developed the Database Access Relational Technology (DART) while working at UCLA and that the program "has been commercialized by Software Technologies Corporation, Pasadena and it is currently in use at several hospitals." This statement, which does not appear to be based on Mr. Vaahedi's personal knowledge, is not supported in the record. For example, there are no letters from other hospitals

asserting that they have adopted DART and that it has influenced the field of software or database design. Even the letters from UCLA staff make no mention of DART.

Finally, the petitioner argues that since software projects generally only last two years, the lengthy labor certification process is impractical for him. The Service acknowledges that there are certain occupations wherein individuals are essentially self-employed, and thus would have no U.S. employer to apply for a labor certification. While this fact will be given due consideration in appropriate cases, 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.

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.