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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



File: EAC 99 027 50126 Office: Vermont Service Center Date: 7 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:



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, 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 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 is a university that seeks to employ the beneficiary as a professor of journalism. 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 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 director did not dispute that the petitioner qualifies as 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.

Counsel describes the beneficiary’s work, and how it is said to contribute to the national interest:

[The beneficiary] improves the journalism education and improves the international cultural understanding of US journalism students whom he teaches by instructing them in and mentoring their exposure to British and European journalism standards, techniques and perspectives, as well as trans-Atlantic journalistic differences. The result is US journalism graduates who are more skilled at investigating and reporting world affairs for a US audience.

The global nature of modern journalism requires US journalism schools like [the petitioner] to make available to its students a knowledge of the inner-workings of the international journalism community. . . . [I]t is imperative that budding journalists have a firm grasp of the ethics and procedures of journalism as practiced in other countries. Journalists who recognize the trans-Atlantic differences in journalism . . . will be better equipped to report world affairs to their US audiences.

Counsel states that the beneficiary “has the ability to discuss international journalism from a first-hand perspective” and has “teaching experience” at 13 U.S. universities and five more universities outside the United States. Counsel lists the beneficiary’s various activities, including his management of an exchange program whereby students at the petitioning institution can attend summer classes at a university in Scotland.

The bulk of the petitioner's initial submission consists of witness letters. Six of the witnesses are members of the administration or faculty of the petitioning university; the others are educators and journalists from the U.S. and abroad. The witnesses at the petitioning institution explain how the beneficiary's work provides an international perspective for his students, but they do not demonstrate that the beneficiary's impact as an educator extends beyond the petitioning university. For instance, Lee Coppola, dean of the petitioner's Russell J. Jandoli School of Journalism and Mass Communication, states that the petitioner's "journalism students . . . are better equipped to practice their profession" because of the beneficiary's efforts. The petitioner's president, Robert W. Wickenheiser, states that the beneficiary "expands considerably the knowledge base of [the petitioner's] student body, and in particular our journalism and mass communication majors." Benefits limited to journalism students at a single university are not national in scope, but these officials do not demonstrate or even claim that the beneficiary's efforts directly benefit anyone other than the petitioner's journalism students. The other witnesses at the petitioning university largely limit their comments to the beneficiary's reputation at that university.

Faculty members from other universities in New York, Pennsylvania and California describe their interactions with the beneficiary and assert that the beneficiary's involvement strengthens the petitioner's journalism program. They also discuss the increasing globalization of journalism, and state that the beneficiary provides a valuable European perspective to the petitioner's journalism students. The witnesses from outside the northeastern U.S. indicate that they have personally known the beneficiary for over a decade.

Other witnesses all have demonstrable ties to the petitioner and/or the beneficiary, as former students, editors, or colleagues in academia or in journalism. Their comments are favorable, but they are couched in terms of how the beneficiary's work will benefit the students at the petitioning university. Witnesses in the United Kingdom state that the beneficiary had headed what was considered to be among that country's best journalism courses, and that a number of his former students have gone on to successful careers in broadcast and print journalism.

Documentation in the record shows that the beneficiary won the 1998 Howard W. Palmer Fellowship Award, granted each year to "one outstanding college journalism professor" by the New York Press Association. According to a newspaper article in the record, "[a]s part of the fellowship, [the beneficiary] will work for six weeks in the news room of the weekly Taconic Newspapers in Millbrook," described in the article as "a small weekly American newspaper." Another article states "[t]he fellowship provides newsroom experience for journalism educators." A letter from the awarding entity notes that the beneficiary applied for the award; he was not nominated by an outsider. The record does not elaborate on the overall importance of the award. We note that local awards of this kind can represent the type of recognition that can help to establish a claim of exceptional ability, but exceptional ability is not itself grounds for a waiver. By law, aliens of exceptional ability must generally adhere to the job offer requirement.

The director requested further evidence that the petitioner has met the guidelines published in Matter of New York State Dept. of Transportation. In response, the petitioner has submitted ten

more witness letters. All of these witnesses are based in upstate New York except for Gannett News Service correspondent John M. Hanchette, who had attended the petitioning university and who frequently speaks there (and was a visiting professor there during the fall 1998 semester). The other witnesses were the beneficiary's students, or else have participated in the beneficiary's instructional or mentoring activities. These witnesses speak of the beneficiary's passion for journalism and for education, and his ability to instill these same values in his students. We do not dispute the beneficiary's skill as an educator or as a journalist. However well-prepared the beneficiary may be to teach journalism at the petitioning university (and he is clearly very well-prepared), his work in that capacity has little direct effect outside of the walls of the petitioning university.

The director denied the petition, stating that the beneficiary's "contributions will primarily be limited to the students he teaches and the internship programs he directs at [the petitioning] university." On appeal, counsel argues that the beneficiary will indeed provide a benefit that is national in scope.

In a subsequent brief, counsel asserts that the petitioner's graduates leave the rural community where the university is located, and "gravitate to the larger communities and media markets because that is where the jobs are for newly graduated journalists. There are graduates of the school working as journalists in nearly all fifty states." Counsel continues, "[s]ince these graduates work throughout the country, the United States benefits from the skills obtained by [the petitioner's] graduates through the teachings of beneficiary." Counsel observes that five of the petitioner's graduates have won Pulitzer Prizes, and cites an article referring to the most recent such winner, from the petitioner's class of 1968 (nearly 20 years before the beneficiary taught there). The fact that the petitioner's graduates, like most college graduates, disperse and relocate after graduation does not show that the beneficiary's specific impact is demonstrably greater than that of other qualified journalism professors. While the beneficiary may have an especially profound impact on his students, the record does not show that those students have an equal effect in their careers as journalists.

Counsel states "[t]here is a severe shortage of professors who have the skills and training that the beneficiary possesses. . . . Petitioner believes that a labor certification, if filed, would be approved for the beneficiary." If this is so, then it begs the question of why that process should be waived. We note that, according to Department of Labor regulations, the labor certification requirements for college professors are different from the requirements for other workers. The regulation at 20 C.F.R. 656.21a states that a U.S. college or university seeking to fill a teaching position can establish that the alien was found, through a competitive recruitment and selection process, to be more qualified than U.S. applicants. Thus, the "minimum requirement" rule would appear not to apply.

Counsel states that labor certification is not a realistic option because the beneficiary has so little time remaining on his H-1B nonimmigrant visa that it would expire before a labor certification could be approved. After the expiration of the visa, the beneficiary would have to remain outside the United States for one year before he could qualify for another H-1B visa. Because we make

every effort to adjudicate appeals in the order of receipt, and because of the large volume of national interest waiver appeals, more than one year has elapsed since counsel argued that the “beneficiary has only one year remaining” (the brief is dated June 15, 2000). Service records indicate that the beneficiary’s visa expired in August 2001. Therefore, the argument that the waiver should be approved before the expiration is now moot; the visa has already expired. The petitioner did not initiate the labor certification process when it first hired the beneficiary; it cannot create a national interest issue by claiming, years later, that it is now too late to do so.

The beneficiary, over the course of his long career as a journalist and instructor, has earned an enviable reputation among editors, journalists, and academics with whom he has worked, while acting as a mentor to grateful and accomplished journalists. These witnesses, however, generally support the director’s contention that the beneficiary’s principal impact is limited to his students at the petitioning institution.

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.