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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: [Redacted]

Office: Nebraska Service Center

Date: 27 MAR 2002

IN RE: Petitioner:
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)

IN BEHALF OF PETITIONER:

Self-represented

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

In this decision, the term "prior counsel" shall refer to Theresa A. Fisher, who represented the petitioner prior to the filing of the appeal. The petitioner states on appeal that he no longer has legal representation.

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 and as a member of the professions holding an advanced degree. The petitioner seeks employment as a senior staff analyst at Compuware Corporation. 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 the classification sought, 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 sole issue raised in the director's decision 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.

In denying the petition, the director stated that the petitioner has not met any of the three prongs of the national interest test outlined in Matter of New York State Dept. of Transportation. We must, therefore, determine whether the evidence of record supports this conclusion.

Several letters accompany the petition. Lawrence Lesperance, a technical resource manager for an unidentified "private organization in Milwaukee which provides technical consulting services and develops and markets its own software products worldwide," states:

The modern relational databases are the backbone of today's Information Technology (IT). Oracle RDBMS (relational database management system) has been setting new standards of its own (which eventually have become industry standards) and keeping itself ahead of other RDBMSs such as Microsoft SQL Server, Sybase, Informix, etc. Because of Oracle RDBMS's technical superiority, portability, scalability and reliability it is one of the most preferred RDBMSs. . . . In my opinion Oracle RDBMS is playing a vital role in today's Information Technology and in turn, in global economics.

While the director found that the petitioner's work is devoid of intrinsic merit, we disagree with this conclusion. As [REDACTED] has observed, computers and database systems are growing exponentially in importance as the economy becomes ever more computerized and globally interlocked. We find that the work of keeping such systems running, and improving and sustaining their functions, has substantial intrinsic merit.

Nevertheless, a finding of substantial intrinsic merit in no way implies a finding of national scope, or that a waiver of the job offer requirement would serve the national interest. We must examine the record further to arrive at conclusions regarding these issues.

[REDACTED] lists the petitioner's computer skills, and states that the petitioner "is an Oracle database expert possessing the skills required to design, develop and administer medium to large databases." He adds that "it is hard to find qualified Oracle RDBMS administrators, with the ability necessary for maintaining an Oracle RDBMS."

A shortage of qualified workers in a given field, regardless of the nature of the occupation, does not constitute grounds for a national interest waiver. Given that the labor certification process was designed to address the issue of worker shortages, a shortage of qualified workers is an argument for obtaining rather than waiving a labor certification. See Matter of New York State Dept. of Transportation, supra. Similarly, arguments about the overall importance of a given occupation may establish the intrinsic merit of that occupation, but such general arguments cannot suffice to show that an individual worker in that field qualifies for a waiver of the job offer requirement.

Jeevan Thadur, Senior Staff Analyst at Compuware, also discusses the overall importance of computer databases and the rapid rate of change in the field, and lists the systems in which the petitioner possesses expertise. Mr. Thadur states:

[The petitioner] has a unique combination of skills and abilities that are required to develop, administer and maintain large Oracle databases. In the ongoing growth of information technology, [the petitioner] with his exceptional expertise has the potential to shoulder mission critical responsibilities, and thus can contribute to American National Interest of staying ahead of the globalized competition.

Mr. Thadur praises the petitioner's "experience in . . . instruction in academics," although the petitioner's work as an instructor was in the area of engineering mechanics, unrelated to his present work with computer databases. We will discuss this issue in greater depth further below.

Various professors who had taught or worked with the petitioner describe his work as a student and as an instructor. These individuals devote varying degrees of attention to the petitioner's computer work. Professor Harold G. Loomis of the University of Hawaii's School of Ocean and Earth Science and Technology states the petitioner "convert[ed] hard copies of old tsunami records (of Pacific Region) into digital-computer files" and "independently developed the related programs to fix the scale of the digital records." Prof. Loomis does not explain the significance of this work, stating only that it was "to [his] satisfaction" and that the petitioner is "technically

skilled and conscientious.” Professor K.N.Venkatakrishna Rao, of Kuvempu University’s B.D.T. College of Engineering, states that the petitioner “started learning FORTRAN IV programming language under my guidance” in the early 1980s, when “Computer Programming was not common.” These witnesses do not explain how the petitioner’s educational background in civil engineering has specifically suited him for a career in computer systems; they state only that the petitioner is intelligent and dedicated, and therefore well disposed to succeed at whatever venture he pursues.

The petitioner submits copies of his professional writings regarding civil, marine, and construction engineering, but he does not explain their relevance to his current work with Oracle databases. They do not compel the conclusion that, because the petitioner has been prolific and successful as a construction/marine engineer, he will find at least equal success as a computer staff analyst.

The petitioner submits documentation regarding his Oracle certification, showing that he was among the first few hundred to obtain such certification. This information does not intrinsically distinguish him from others who obtained the same certification at the same time, or at a later time. Oracle’s own documentation refers to the certification as a “method for objectively measuring professional competence.” While professional competence is undoubtedly important, it is not grounds for a national interest waiver.

The petitioner has not explained how his work with computers is national in scope. The fact that computers are in use around the country, and indeed around the world, does not establish that the work of every individual analyst is national in scope. The design of a database system for a given client is of interest mainly to that particular client. The petitioner has also not significantly distinguished himself from others in his field. That he was among the first to obtain a comparatively rare credential does not differentiate him from others with the same credential, nor does it establish that such a credential cannot be a valid job requirement on a labor certification.

The director denied the petition, stating (as noted above) that the petitioner has not met the guidelines set forth in Matter of New York State Dept. of Transportation. On appeal, the petitioner argues that his occupation meets the “substantial intrinsic merit” test, which (as we have discussed) we do not dispute. The petitioner argues that his work will be national in scope because he, “by very nature of his programming skills, could be doing [the] same functions for a company operating nationwide.” The argument that his work could, for a different employer, be national in scope does not establish that it is in fact national in scope. The petitioner also asserts that he has worked on projects for major corporations such as Harley-Davidson, which would establish actual instances of national scope. The petitioner, however, offers no documentary support to substantiate these claims or to establish the extent of his involvement in the projects. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner argues that labor certification is not available because he is self-petitioning, and he cannot obtain a labor certification on his own behalf. This argument, however, merely begs the question of why his employer cannot obtain a labor certification and file a new petition on his behalf, in which case it would be unnecessary to establish national interest. The petitioner asserts that the above scenario would mean that “the labor certification will have to be started all over again,” but he does not explain how this delay would be against the national interest (as opposed to the convenience of the employer and alien). The petitioner contends that the director “makes it impossible to file the petition as ‘self-petition’ by the alien petitioner,” but he offers no logical support for this claim. We could offer the counter-assertion that an alien does not guarantee himself or herself a waiver simply by self-petitioning.

The petitioner submits several documents about Oracle Corporation and copies of the certificates he holds from that company (as well as an additional certificate from Microsoft). This documentation establishes the petitioner’s professional competence as a professional in the computer field, but we cannot find that these certificates are *prima facie* evidence of eligibility for a national interest waiver. U.S. workers also hold such certificates, and earned them by meeting the same standards that the petitioner did. The statute and regulations do not imply blanket waivers for certified computer professionals, and the petitioner has not shown that he will benefit the national interest to a substantially greater degree than would other certified professionals in his field.

There remains the issue of whether or not the petitioner is a member of the professions with an advanced degree, and/or an alien of exceptional ability. The petitioner claims eligibility for both of these classifications. The director addressed this issue only briefly in the decision, stating “[t]he Service accepts that an advanced degree or exceptional ability is required by the occupation, and that the petitioner holds the requisite advanced degree or exceptional ability under Service law.” One flaw in this statement is that, in instances involving a national interest waiver, the petitioner need not establish that the occupation requires an advanced degree or exceptional ability; the occupation need only be professional in nature. More importantly, there is cause to dispute the director’s conclusion regarding the petitioner’s eligibility for the visa classification.

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 director stated that the beneficiary petitioner qualifies as a member of the professions holding an advanced degree. The record, however, does not support this conclusion. The petitioner holds a bachelor's degree and two master's degrees, but none of the degrees appear to pertain to the petitioner's current work. The petitioner's degrees are in the fields of civil engineering, marine structures, and construction engineering and management. Compuware is a computer software company, and the petitioner describes his duties there as "engineering analysis, project management, database administration, engineering programming, and computer related consulting services." There is no indication that the petitioner's duties at Compuware involve civil engineering, construction engineering, or marine structures; references to "engineering" do not establish such a connection because there is a very wide range of activities that fall under the umbrella term "engineering." In an introductory letter that accompanied the petition, prior counsel discussed the importance of "[i]mproving the delivery of computer/information technology" but offered no explanation as to how this work relates to any of the petitioner's degrees.

The petitioner in this case seeks classification under section 203(b)(2) of the Act, as a member of the professions holding an advanced degree. Section 203(b)(3)(A)(ii) of the Act establishes a separate, lower immigrant visa classification for aliens who are members of the professions but do not hold advanced degrees. The advanced degree is the only material difference between aliens in the above two classifications. This difference entitles aliens in the higher-priority classification to consideration for the added benefit of the national interest waiver.

Because the only eligibility factor separating the above two visa classifications is an advanced degree, and because these visa classifications are both employment-based, it is only reasonable to require that an alien's advanced degree be pertinent to the alien's intended profession in order to qualify the alien for the higher classification. The distinction between classifications exists to recognize an alien's special expertise in a particular field, rather than simply to reward the alien's perseverance in earning an advanced degree or employment experience. Therefore, there must be a clear, linear connection between the alien's educational background and the profession in which the alien seeks employment. An alien cannot reasonably qualify for an employment-based immigration benefit based upon an irrelevant degree, because such a degree affords the alien little or no special expertise in the field the alien intends to pursue.

While the petitioner, in the course of his studies, worked extensively with computers (as is common among engineers), the petitioner does not hold an advanced degree pertaining to his current work. Similarly, the petitioner does not have at least five years of post-baccalaureate experience as a staff analyst. The petitioner's resume lists only six months in mainframe maintenance at the University of Hawaii in 1995, and a year and a half as a staff analyst from October 1997 to the petition's March 1999 filing date. Therefore, the petitioner has not even claimed, let alone established, at least five years of progressive post-baccalaureate experience as a staff analyst.

Prior counsel's assertion that the petitioner's computer programming skills were useful in his engineering work does not persuade us that the petitioner was employed as a computer programmer or analyst, rather than as an engineer who had programming skills. The petitioner holds advanced degrees pertaining to one profession, but he now works in a very different profession. Thus, in the absence of evidence that the petitioner holds an advanced degree (or sufficient post-baccalaureate experience) in the field in which he seeks employment, we cannot find that the petitioner qualifies as a member of the professions holding an advanced degree. We note that, if a new petition were filed, relating to the petitioner's work as a civil engineer, then in the context of the new petition, the petitioner would appear to be readily classifiable as a member of the professions holding an advanced degree (although his eligibility for the classification would not guarantee or imply approval of a national interest waiver).

The petitioner also claims eligibility 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. Prior counsel has claimed that the petitioner fulfills the following criteria.

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 we have already observed, the petitioner's baccalaureate and master's degrees do not relate to the petitioner's area of claimed exceptional ability. The petitioner does hold a certificate as a Certified Oracle Professional, but this certificate appears to be more applicable to occupational certification rather than educational certification. A separate criterion, further below, addresses occupational certification. A single training certificate cannot satisfy both of these separate criteria; to hold otherwise would defeat the purpose of requiring a variety of evidence to establish exceptional ability.

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

The petitioner's certification as an Oracle Certified Professional appears to satisfy this criterion. It is not a mandatory certification (which would do nothing to distinguish the petitioner from other qualified professionals in the field), but rather a mark of specialized training and expertise.

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

Prior counsel has stated that recommendation letters in the record (discussed above) constitute recognition from peers. These letters represent, in essence, private communications to the Service rather than open recognition of the petitioner's work, and they came into existence not because of the petitioner's achievements, but because the petitioner solicited the letters to support his

immigration petition. Furthermore, the letters do not demonstrate specific significant contributions or achievements; they merely attest in general terms to the petitioner's skill.

For the reasons discussed above, the petitioner has not adequately established eligibility for classification either as an advanced degree professional or as an alien of exceptional ability, and we withdraw the director's finding to the contrary. Because we uphold the director's finding regarding the national interest waiver, this additional finding does not fundamentally alter the outcome of the petition or the appeal.

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.

ORDER: The appeal is dismissed.