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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

Identification card deleted in
accordance with immigration
laws and regulations.



File: [Redacted]

Office: Nebraska Service Center

Date:

MAY 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:



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.

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.

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 management engineering from the New Jersey Institute of Technology. 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.

We concur with the director that the petitioner works in an area of intrinsic merit, computer engineering, and that the proposed benefits of his work, improved databases for tracking transplant and other medical patients, would be national in scope. It remains, then, to determine whether the petitioner 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. 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. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. Id. at note 6.

The petitioner submitted letters from his colleagues at the Cleveland Clinic Foundation discussing his contributions to that institution. [REDACTED] Chairman of the Department of Biostatistics and Epidemiology at the Cleveland Clinic, writes:

The [Preventive Cardiology and Rehabilitation Program (PCRPP)] is a nurse-run, algorithm-driven, computer based multidisciplinary program, which offers

aggressive, effective, and comprehensive treatment of cardiovascular disease risk factors in a referred, high-risk patient population. Output from this system is customized for each patient. Two individuals worked on this project and [the petitioner] is one of them. He developed this program which is the only one like it in the world. Patients are coming from across the world to use this system. It has created better care for our Patients, and positive economic impact. The [Unified Transplant Database (UTD)] was developed as an administrative, clinical and research tool. Its mission is to provide clinical, administrative support to all solid organ and bone marrow transplant programs. This database provides a system to track and manage data on patients undergoing evaluation for transplantation. It tracks everything from the time the patient was referred to the approval process, transplantation and follow-up. [The petitioner] is responsible for the maintenance of the program and the addition of any new features and improvements.

further asserts that a worker with “minimum requirements” would not be able to handle the petitioner’s complex duties.

Sprecher, Director of Preventive Cardiology and Rehabilitation at the Cleveland Clinic, writes:

[The petitioner] has been working with us on a project in the Preventive Cardiology and Rehabilitation Section of the Department of Cardiology, Cleveland Clinic Foundation. We are developing strategic methodologies to reduce the risk for future coronary artery disease. This is a project which will benefit our country as a whole. The focus is on the national imperative to help develop this program to assist millions of people. This is of an utmost importance and a major keynote of our programs and development efforts. The Preventive Cardiology and Rehabilitation Project is a point and click interface system that allows risk factors to be queried and entered into a database. This database is set up to take on these pieces of information accessed by the statistical program. The interface aspect is tailored to the cardiology preventive strategy.

[The petitioner] plays an extremely important and necessary role in this program. Our preventive strategic project is not limited to the Cleveland Clinic Foundation but it is of use and possible implementation in cities around the United States. His ability to develop the computerized strategy, programming and systems analysis work that must be used in order to accrue that necessary data was outstanding and could not have been done without him. The Cleveland Clinic Foundation has had individuals working on this project prior to [the petitioner], however, they were not able to create and maintain the program as is necessary for the project to be a success.

The petitioner also submitted a letter from Director of the Information

Systems Center, Department of Biostatistics and Epidemiology at the Cleveland Clinic. [REDACTED] writes:

[The petitioner] is a pivotal member of the information systems team at Cleveland Clinic. He designed database systems for several research studies that will have a significant impact on our health care. He is currently developing a database system for [the] Radiology department of Cleveland Clinic and maintaining a database system which was developed for [the] Transplant center. It happened in the past that [the petitioner] accomplished tasks that other programmers failed to do. [The] Preventive Cardiology program is one example. He also worked on [the] AASK study, a multicenter clinical trial examining a new treatment of kidney diseases in [the] Afro American population. This is a highly complex study, involving intensive coordination between ourselves, a center biochemistry laboratory, and twelve other units throughout the country participating in the study. [The petitioner] performed the maintenance and upgrading of the technical database for this study.

[REDACTED] is, a doctor at the Cleveland Clinic, discusses the amount of heart surgery at the Cleveland Clinic, making it a good place to implement the nation's "first computerized database for Preventive Cardiology and Rehabilitation." He reiterates much of the information quoted above, asserting that "a program of this type and caliber could easily be exported to other hospitals nationwide."

The above letters are all from the petitioner's immediate circle of colleagues at the Cleveland Clinic, most of whom specialize in medicine, not computer programming or systems analysis. While such letters are important in providing details about the petitioner's role in various projects, they cannot by themselves establish the petitioner's influence over the field as a whole.

While the petitioner's program may be usable by other hospitals, the record contains no evidence that high level officials at other hospitals have expressed any interest in obtaining the petitioner's program for their own use. The record does not contain letters from experts in the computer programming field evaluating the petitioner's work for the Cleveland Clinic or from other programmers explaining how the petitioner's work has influenced their own projects.

While the results of the medical studies using the petitioner's program for data collection and analysis may have national medical significance, the petitioner has not demonstrated, through the opinions of independent experts in the computer field, that the petitioner's program was significant in and of itself. As the petitioner has not demonstrated that his program has national significance for the computer programming industry, the arguments that the labor certification process would be detrimental because the petitioner is the only one who can complete and maintain the database he created are not persuasive. Further, 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. Nothing in the

legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process.

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.