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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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File: EAC 98 264 52905

Office: Vermont Service Center

Date: 23 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, 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 seeks to employ the beneficiary as an intern architect. 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 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 petition was filed on September 21, 1998. The beneficiary holds a Master of Science degree in Urban Design from the Pratt Institute in New York. The beneficiary's occupation falls within the pertinent regulatory definition of a profession. The beneficiary thus qualifies as a 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.

The application for the national interest waiver cannot be approved. The regulation at 8 C.F.R. 204.5(k)(4)(ii) states, in pertinent part, "[t]o apply for the [national interest] exemption the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate." The record does not contain this document, and therefore, by regulation, the beneficiary cannot be considered for a waiver of the job offer requirement. The director, however, does not appear to have informed the petitioner of this critical omission. Below, we shall consider the merits of the petitioner's national interest claim.

We concur with the director that the beneficiary works in an area of intrinsic merit, architecture, and that the proposed benefits of her work 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 beneficiary's contributions in the field are of such unusual significance that she merits the special benefit of a national interest waiver, over and above the visa classification sought. By seeking an extra benefit, the petitioner assumes an extra

burden of proof. The petitioner must demonstrate the beneficiary's past history of achievement having some degree of influence on the field as a whole. Id. at note 6.

In a letter accompanying the initial petition, counsel states that the petitioner's request for a waiver is based on the beneficiary's experience in international projects and expertise in designing and executing urban renewal projects. Since obtaining her master's degree on October 1, 1996, the beneficiary has worked at Grunzen Samton and Castro-Blanco Piscioneri and Associates. We note that the letters from Peter Samton and Jeff Miles of Grunzen Samton offer conflicting information regarding the petitioner's work experience at their architectural firm. [REDACTED] a partner in the firm, states that the petitioner worked on a project at the firm "for two months, during September and October 1996." In contrast, [REDACTED] Senior Associate, states that the petitioner worked at the firm "for three months, in the Fall of 1997." The petitioner has failed to resolve this discrepancy.

Along with documentation pertaining to nine of the beneficiary's architectural projects, including four academic assignments completed by the beneficiary in pursuit of her graduate and undergraduate degrees, the petitioner submits several witness letters.

Professor Sarelle Weisberg of the Pratt Institute describes the beneficiary's educational background and notes that the beneficiary won "two major international competitions" while pursuing her graduate studies. However, Professor Weisberg fails to identify the awarding bodies. Furthermore, the record contains no evidence from any awarding body to support the professor's claim or to demonstrate the significance of the alleged awards to the architectural field. Letters from Thomas Schulte, President of the Pratt Institute, and Dr. Kathleen Rice, Vice President for Student Life at the Pratt Institute, mention the beneficiary's academic achievements and her work in their offices as a graduate assistant and employee. Their descriptions relate to the beneficiary's efforts as an office assistant handling routine administrative tasks rather than professional work in the architectural field.

University study is not a field of endeavor, but, rather, training for future employment in a field of endeavor. The beneficiary's scholastic achievement may place her among the top students at her educational institution, but it offers no meaningful comparison between the beneficiary and experienced professionals in the field of architecture.

Carlos Mieleles of Castro-Blanco Piscioneri and Associates states that his firm "specializes in residential, educational, and institutional projects with a major emphasis on subsidized housing for low income families." His letter notes the beneficiary's participation in a project involving the rehabilitation of seven apartment buildings in the South Bronx under New York City's Neighborhood Redevelopment Program. He concludes by stating that the beneficiary is eligible for the national interest waiver based on "her credentials and dedication to a profession which seeks to provide livable and affordable environments for people." Carlos Mieleles's letter offers no specific information detailing the beneficiary's individual contribution to the program. Furthermore, nothing in his letter suggests that the beneficiary, as an individual, has made a significant contribution to the field of architecture.

██████████ President of the South Bronx Community Management Company, states:

I've had the pleasure of working closely with [the beneficiary] throughout the past year as she was one of the instrumental [participants] in the design and development of "Melrose Court" which is under the Neighborhood Redevelopment Program of the Department of Housing Preservation and Development of the City of New York.

* * *

[The beneficiary's] knowledge and experience not only will enhance this project but also become a social contribution for the residents of the South Bronx. I hope she would quickly become a valued employee of any architectural company, especially one practicing in the public sector.

The beneficiary may have assisted on various projects undertaken by her employers, but her ability to impact the field beyond her firm's projects has not been demonstrated. While the petitioner has participated to some degree in the Neighborhood Redevelopment Program, it has not been demonstrated how her role as an architect on this project has significantly impacted her field, urban renewal, or the nation's economy. Mere association with a given project hardly demonstrates that an individual's contributions warrant the special benefit of a national interest waiver.

The director requested further evidence that the petitioner has met the guidelines published in Matter of New York State Department of Transportation. In response, the petitioner submits a statement from counsel and six additional witness letters. Four of these letters are second submissions from Professor Weisberg, ██████████, and ██████████

██████████ the petitioner's supervisor at Castro-Blanco Piscioneri and Associates, states:

[The beneficiary] stood out as an exceptionally bright and creative architect with the technical skills, intuition and passion required in this type of work. Her design ideas clearly indicate the fact that she has acquired the skills to deal successfully with the extremely complex issues involved in low-income housing construction. While working at the Neighborhood Development Program, [the beneficiary] demonstrated that she is one of few in our profession who is preeminently able and ready to take up the challenge.

In accordance with the statute, exceptional ability is not by itself sufficient cause for a national interest waiver. The benefit that the petitioner presents to her field of endeavor must greatly exceed the "achievements and significant contributions" contemplated in the regulation at 8 C.F.R. 204.5(k)(3)(ii)(F). The petitioner 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 cannot suffice to state that the petitioner possesses useful skills, or a "unique background." Regardless of the alien's particular experience or skills, even assuming they are unique, the benefit the alien's skills or background will provide to the United States must also

unique, the benefit the alien's skills or background will provide to the United States must also considerably outweigh the inherent national interest in protecting U.S. workers through the labor certification process.

Professor [REDACTED] states that the beneficiary demonstrates “truly outstanding professional capabilities with respect to the execution of international projects as well as in designing housing for the under-served urban poor.” He adds: “Advancing the marketing of the United States architectural and urban design services abroad and developing the designs for low income housing are very significant areas of commitment and endeavor, in which [the petitioner] excels.” [REDACTED] and [REDACTED] offer similar arguments. Pursuant to published precedent, the overall importance of a given project or field of endeavor is insufficient to demonstrate eligibility for the national interest waiver. While the Service recognizes the undoubted importance of urban design and renewal, and maintaining U.S. competitiveness in architectural projects abroad, eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. It does not follow that every individual who has the qualifications to perform such architectural services satisfies the national interest threshold. By law, advanced degree professionals and aliens of exceptional ability are generally required to have a job offer and a labor certification. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. Mountain States Tel. & Tel. v. Pueblo of Santa Ana, 472 U.S. 237, 249 (1985); Sutton v. United States, 819 F.2d 1289, 1295 (5th Cir. 1987). By asserting that architects with experience in urban design inherently serve the national interest, the witnesses essentially contend that the job offer requirement should never be enforced for this occupation, and thus this section of the statute would have no meaningful effect. Congress plainly intends the national interest waiver to be the exception rather than the rule.

We note that the letters from Professor [REDACTED] and [REDACTED] contain several passages that are virtually identical in content. For example, each of their letters contains the following two paragraphs:

The talent that [the beneficiary] represents is indeed one that cannot be articulated in a labor certification for the following reasons. A labor certification seeks to locate, in the labor market and for one particular employer, a U.S. worker meeting the minimum requirements for a position. In the case of [the beneficiary], who has demonstrated truly outstanding professional capabilities with respect to execution of international projects as well as designing housing for the urban poor, a conventional “minimum requirement” is clearly inappropriate. Advancing the marketing of U.S. architectural services abroad and designing housing for the urban poor are significant areas of endeavor in which [the beneficiary] excels.

The internationalization of services in an intensely competitive field makes it imperative that this country be able to provide architectural services of extremely high quality to entities abroad. Gifted architects like [the beneficiary] can make significant contributions to the opening of the world market for U.S. architectural firms. As well as successfully

executing international projects, [the beneficiary] has also provided innovative solutions to problems associated with designing urban housing for low income families. Her work in the designing of housing projects in the South Bronx, is a testimony to her ability to make substantial contributions in this area that will have national implication.

While Professor [REDACTED] and Thomas [REDACTED] in signing their letters, are clearly supportive of the beneficiary, it appears highly unlikely that they themselves independently chose the wording of their letters. Given the similarity among the letters and the use of identical language, it strongly appears that portions of these letters were written by an unidentified party. It is acknowledged that these individuals have lent their support to this petition, but it appears that they did not choose the wording in their second letters and therefore the above assertions carry diminished weight.

Notwithstanding the above, we shall address the issue raised in their letters regarding the inapplicability of labor certification for the beneficiary. The inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner must still demonstrate that the beneficiary will serve the national interest to a substantially greater degree than do others in the same field. Congress plainly intended that, as a matter of course, advanced degree professionals should be subject to the job offer/labor certification requirement. The national interest waiver is not merely an option to be exercised at the discretion of the alien or her employer. Rather, it is a special, added benefit that necessarily carries with it the additional burden of demonstrating that the alien's admission will serve the national interest of the United States. It cannot suffice for the petitioner to simply enumerate the potential benefits of the beneficiary's work. To hold otherwise would eliminate the job offer requirement altogether, except for advanced-degree professionals whose work was of no demonstrable benefit to anyone.

The witness letters fail to demonstrate how the beneficiary's architectural work has significantly impacted her field. The letters generally address the beneficiary's future potential as an architect rather than a past record of demonstrable achievement. The witnesses' use of phrases such as "would make an important contribution to any architectural firm" and "will strengthen and benefit our profession" in describing the beneficiary suggest future results rather than a past record of demonstrable achievement. In concluding his letter, Carlos Mieles refers to the "potential contribution" of the beneficiary in serving the United States. Karl Smith, registered architect and associate at Castro-Blanco Piscioneri, closes his letter by stating: "I believe [the beneficiary] will make significant contributions in the field of housing and will be an asset to the architectural community in this country." General statements attesting to the future significance of the petitioner's work are insufficient to demonstrate eligibility for the national interest waiver.

The director denied the petition, stating that the petitioner failed to establish that a waiver of the requirement of an approved labor certification would be in the national interest of the United States. The director noted an absence of evidence "specifying the direct role the beneficiary has played in the noted projects."

On appeal, counsel states: “This decision is arbitrary, capricious and contrary to the evidence and the pertinent statutory and regulatory provisions.” Counsel states that the director discounted letters from experts in the relevant field as secondary evidence of the beneficiary’s “exceptional capabilities.” We disagree with counsel’s conclusion and note that counsel is misstating the director’s finding. The issue in this case is not whether the beneficiary qualifies as an alien of exceptional ability, but, rather, whether this particular petitioner satisfies the threshold for a national interest waiver. The director’s decision stated: “[N]o corroborative primary evidence has been presented specifying the direct role the beneficiary has played in the noted projects.” We concur with the director’s finding that the witness letters submitted by the petitioner did not address the beneficiary’s specific role or duties on the architectural projects mentioned. Instead, they offered only vague generalizations regarding the petitioner’s capabilities as a promising architect. The beneficiary’s role at various firms appears limited to that of an assistant or intern (as indicated under Part 6 of the Form I-140).

According to the Department of Labor’s Occupational Outlook Handbook, all States and the District of Columbia require individuals to be licensed (registered) before they may call themselves architects or contract to provide architectural services. The petitioner has submitted no evidence of the beneficiary’s licensure in New York. Throughout the proceeding, we note the absence of documentation from PEG/PARK, LLC, the petitioning entity. Other than signatures on the Form I-140 and Form G-28, this “New York City professional architectural design firm” offers nothing in support of the beneficiary’s eligibility for a national interest waiver.

The petitioner’s witness letters consist entirely of faculty members at the Pratt Institute and individuals with whom the beneficiary has previously worked. We note that the record reflects little formal recognition or awards for the beneficiary’s architectural work, arising from various groups taking the initiative to recognize the petitioner’s contributions, as opposed to private letters solicited from selected witnesses expressly for the purpose of supporting the visa petition. Independent evidence that would have existed whether or not this petition was filed is more persuasive than subjective statements from individuals personally acquainted with the petitioner. The petitioner has not shown that the beneficiary’s architectural renditions have attracted significant attention outside of the Pratt Institute or her employers.

The evidence submitted in support of the petition fails to demonstrate that the beneficiary has significantly impacted the architectural field. For example, the petitioner has not shown that she ever served as lead architect on a project that was actually implemented. Of the nine architectural projects submitted with the petition, only the Melrose Court remodeling project appears to have gone to construction. We note that the primary architects on this neighborhood redevelopment program for Castro-Blanco Piscioneri were [REDACTED] and [REDACTED] the firm’s associates who supervised the beneficiary’s work as an intern architect.

It has not been shown that the beneficiary’s specific projects are inherently more important than similar projects underway in other cities, or that her designs have been recognized as superior to those of licensed professional architects. Further, the petitioner has failed to demonstrate how

the beneficiary's specific architectural designs, which have not been implemented outside of New York, benefit the national interest.

Pursuant to published precedent, the petitioner must establish a past history of the beneficiary's demonstrable achievements having some degree of influence on the field as whole. In this case, the petitioner has failed to establish that the beneficiary possesses a proven record of achievements and contributions of significance to the architectural field beyond mere speculation. At issue is whether this beneficiary's contributions in the field are of such unusual significance that she merits the special benefit of a national interest waiver, over and above the visa classification sought. By seeking an extra benefit, the petitioner assumes an extra burden of proof. Without evidence that the beneficiary has been responsible for significant achievements in the architectural field, we must find that the petitioner's assertion of prospective national benefit is speculative at best.

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.