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U.S. Department of Justice
Immigration and Naturalization Service

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prevent identity compromise
Application - J. [REDACTED]

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

[REDACTED]

File: [REDACTED] Office: Texas Service Center

Date: 24 MAY 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:

[REDACTED]

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DISCUSSION: The visa petition was denied by the Director, Texas Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. On May 9, 2002, the petitioner, through counsel, requested that the appeal be withdrawn.

All documents have been returned to the office that originally decided the case. Any further inquiry must be made to that office.

ORDER: The appeal is dismissed based on its withdrawal by the petitioner

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

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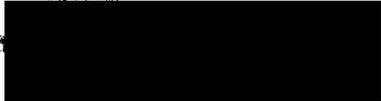


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U.S. Department of Justice
Immigration and Naturalization Service

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disclosure to unauthorized persons

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



File: [redacted] SRC-00-151-51777 Office: Texas Service Center Date: 24 MAY 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, Texas 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 an alien of exceptional ability and/or 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.

It appears from the record that the petitioner seeks classification as an alien of exceptional ability. This issue is moot, however, because the record establishes that the petitioner holds a Master's degree in computer applications from Bharathiar 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.

We concur with the director that the petitioner works in an area of intrinsic merit, programmer/analyst. The petitioner has designed applications for his employer, a nuclear power plant. The letters of support argue that the petitioner's work is in the national interest because his work ensures the safety of the surrounding environment and because providing electricity to consumers affects interstate commerce. While safety at nuclear plants is of national importance, the petitioner has not established that one computer programmer at one nuclear plant will impact safety at nuclear plants nationwide. It is acknowledged that [REDACTED] a database administrator with the petitioner's employer, asserts that the petitioner has contributed to the employer running a world class plant. The petitioner provides no evidence to support that assertion, such as a letter from the Department of Energy. Finally, we must 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.

William N. Eichorn III, the information technology manager for the petitioner's employer, South Texas Project Nuclear Operating Company (STPNOC), asserts that the information industry has not developed "nuclear grade" applications so STPNOC had to develop its own applications, a significant number of which have been developed by the petitioner. [REDACTED] asserts that it is difficult to maintain programmer/analysts at STPNOC due to the relatively low pay and the company's location and that any new analyst would require four to five years of training to reach the petitioner's level of knowledge of STPNOC's system. [REDACTED] affirms that the petitioner has been responsible for the design and building of STPNOC's Nuclear Maintenance Control, Nuclear Surveillances, Electronic Records Management, and interfacing the company's Nuclear Work Management environment with a Procure and Inventory Control packaged purchased from the outside. [REDACTED] states:

What makes [the petitioner's] skills unique is his extensive Oracle Programmer/Analyst skills combined with his knowledge of Nuclear operations and safety practices. It should be noted that Nuclear Professionals are a rare commodity in today's world. In addition, Oracle Programmer/Analyst[s] are also a rare commodity in the exploding internet world. Finding an individual with both of these skills is next to impossible. [The petitioner] not only possesses these two types of skills, but is an expert in the Programmer/Analyst side of the equation.

During the rewrite of our nuclear Applications in the 1995/1996 timeframe, STP hired over 70 Oracle Programmer/Analysts (all of which had no knowledge of Nuclear Operations). [The petitioner] without question, was the best Programmer/Analyst of that group! Since that time he has built an extensive set of knowledge on Nuclear operations.

While Mr. Eichorn asserts that programmers with Oracle knowledge are rare, he also asserts that Oracle is used by most if not all of the Fortune 1000 companies. It is not credible that most programmers are unskilled in such a commonly used application. Regardless, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor.

The petitioner also provided letters from coworkers and former coworkers at STPNOC which provide similar information, asserting that the petitioner's designs and problem-solving allow the

plant to conform to nuclear regulatory requirements and maintain safe conditions. [REDACTED] a supervisor for software services, asserts that STPNOC's success is due to the petitioner and that STPNOC's clients specifically desire the petitioner's services either directly or as a problem solver. In addition, the petitioner submitted a letter from [REDACTED] the Deputy Manager of Information Systems Department at Hindustan Aeronautics, Ltd., Bangalore, India, where the petitioner previously worked. [REDACTED] provides general praise regarding the petitioner's Oracle and application design skills.

The above letters are all from the petitioner's collaborators and immediate colleagues. 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.

In response to the director's request for additional documentation, the petitioner submitted a letter from [REDACTED] President of Schuler consulting in Houston, Texas, who indicates that she has reviewed the petitioner's work and resume. [REDACTED] without explanation, asserts that it would not be in the national interest to require the petitioner to complete the lengthy labor certification process. 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. She further asserts that the petitioner would be difficult for STPNOC to replace. As stated above, this is an issue under the jurisdiction of the Department of Labor.

The petitioner submitted samples of his programming work, in the form of screen printouts and written program language. The Service does not claim competence to analyze this evidence and determine whether or not it represents a contribution to the programming field as a whole.

On appeal, the petitioner submitted a new letter from [REDACTED] and a letter from another coworker, [REDACTED]. Neither letter provides any information not included in previous letters of support from STPNOC employees. The record remains absent any evidence that the petitioner has influenced his field as a whole such as letters from other nuclear power plants affirming that their plants have adopted or been influenced by the petitioner's application designs for STPNOC.

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.