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U.S. Department of Justice

Immigration and Naturalization Service

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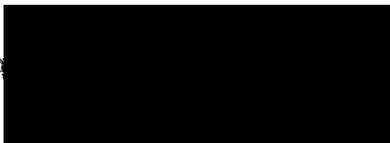
File: [Redacted] Office: NEBRASKA SERVICE CENTER

Date: NOV 19 2008

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, 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 seeks employment as a statistician at Blue Cross Blue Shield of Montana (“BCBSMT”). At the time of filing, the petitioner was also a doctoral student at the University of Montana. 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 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 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, 22 I&N Dec. 215 (Comm. 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.

Along with copies of his scholarly work (for the most part unpublished) and documentation of his professional training, the petitioner submits several witness letters. The most detailed letter is from Carol Wood, director of Health Care Services at BCBSMT, who states:

[The petitioner] has used his cutting-edge expertise and his specialized knowledge to perform statistical analyses of such important health care issues as coronary artery disease, breast cancer and cervical cancer screening, Cesarean section rates, childhood immunization rates, hospital inpatient diagnosis related groups model, etc. Furthermore, he has played a leading role in the research that our company is conducting for the National Committee for Quality Assurance (NCQA) accreditation, and the Health Plan Employer Data and Information Set (HEDIS). .

[The petitioner] became the first statistician to develop generalized linear models, non-linear models and time series models with nonparametric correlation coefficients to create a very powerful methodology for conducting statistical analyses. [The petitioner] has used this powerful methodology to conduct leading-edge statistical research for our company in the field of health care quality management.

In the last few months, [the petitioner] has developed a new statistical model called diagnosis related groups ("DRG") model. This new model is perhaps [the petitioner's] most exciting work to date. . . .

This extremely important model is used to monitor the quality of health care provided by managed care organizations such as HMOs and hospitals. . . . These organizations are often criticized by patients, doctors, and politicians, and [the petitioner's] methodology will allow these individuals, as well as other policymakers, to better evaluate the effectiveness of particular managed care organizations. The extreme importance of this model is self-evident and [the petitioner's] breakthrough will be used throughout the United States. For example, the Blue Cross/Blue Shield organization in New Hampshire has entered into discussion with [the petitioner] so that they can use his new model and he is also working with a health care management consulting group in Atlanta [that] is also extremely interested in this methodology.

Among the other individuals offering letters on the petitioner's behalf are another BCBSMT official, faculty members of the University of Montana, U.S. Senator [REDACTED] who states that the petitioner "played a prominent role in the expansion" of the Montana's Children's Health Insurance Program. The record also contains some documentation of statistical work relating to fire prevention that the petitioner had performed several years earlier for the U.S. Forest Service. The petitioner's published work in China appears to have dealt with fire rather than with health care; there is no evidence that the petitioner worked in the area of health care statistics prior to 1997.

The director denied the petition, acknowledging the intrinsic merit of the petitioner's work but finding that the petitioner's work lacks national scope and that the petitioner's own contribution does not warrant a waiver of the job offer requirement that, by law, attaches to the classification that the petitioner chose to seek.

The director's finding that the petitioner's work lacks national scope appears to derive from the petitioner's "employment as a statistician for a single insurance carrier in one state." [REDACTED] had indicated that entities in other states had shown interest in the petitioner's methods, and that the petitioner was engaged in research for NCQA, which extends beyond the one employer. These assertions, taken at face value, show a broader scope of the petitioner's work, although we note the absence of direct evidence from NCQA officials, officials of Blue Cross Blue Shield New Hampshire, and so on, that would confirm this influence outside of Montana. In any event, regardless of whether the petitioner's work actually has had national influence, the potential for such influence is inherent in the petitioner's work. There is nothing in his statistical model that limits its applicability to Montana or to one particular employer in Montana, and the petitioner's employer has not indicated that it will guard that model as a proprietary secret rather than sharing it and allowing it to be used for the greater benefit of the nation. Therefore, we find that the petitioner's work is national in scope.

Counsel argues that the director relied upon an “excessive threshold,” finding that the petitioner is not “among the leading statisticians in his field.” We concur that there is no basis in the statute, regulations or case law for the requirement that an alien seeking a waiver must be a leader in his field. The alien must, nevertheless, present a greater benefit to the national interest than would be routinely expected of a qualified worker in the alien’s field.

Counsel asserts that the director erred by failing to issue a request for evidence in accordance with 8 C.F.R. 103.2(b)(8). At this point, the decision already having been rendered, the most expedient remedy for this complaint is the full consideration on appeal of any evidence that the petitioner would have submitted in response to such a request.

Counsel protests that the director ignored valid witness letters only because those individuals are somehow connected to the petitioner. Counsel asserts “the Petitioner’s colleagues know his qualifications best, and it makes little sense for the Service Center to require that the Petitioner look outside this circle for testimony from individuals less qualified to render an informed, professional opinion.” While counsel is correct in asserting that the petitioner’s immediate colleagues will have the most direct knowledge of an alien’s work, and their letters have value in this respect, there are other considerations as well. In this instance, witnesses have asserted that the petitioner’s new model is of singular importance to the very science of statistics itself, and that organizations throughout the United States seek to use the petitioner’s model in order to improve the provision of health care services. If the petitioner seeks a waiver on the grounds that his new model will be implemented nationally, then it is not unreasonable to expect evidence outside of the petitioner’s circle to show that there is, in fact, widespread interest in that model. Otherwise, we have only the unsupported claims and confident speculations of the petitioner’s employers and collaborators. If the waiver request is to rest on the assertion that the petitioner’s work is important outside of Montana, then the best evidence to support that claim would consist of objective documentation that directly shows that the petitioner’s work has had the national effect that witnesses have claimed. If the early claims of BCBSMT officials are not sufficient to establish this impact, then further assertions from other BCBSMT officials do not represent powerful reinforcement of the claim.

We note also that the petitioner has provided no evidence to demonstrate, objectively, the impact that his model has already had on health care in Montana or elsewhere. If the petitioner cannot produce evidence that his model has already had a significant impact on health care, or that individuals and organizations beyond his immediate circle have already taken special notice of his work, then the record contains no objective support for the assertions of the petitioner’s employers and colleagues. The petitioner has spent the bulk of his career performing statistical work unrelated to health care and health insurance, and materials regarding his earlier work pertaining to fire behavior have little discernible relevance to the means by which the petitioner claims he will prospectively serve the national interest.

Several letters accompany the appeal. [REDACTED] principal and consulting actuary with Milliman and Robertson, states:

In my capacity as a Consulting Actuary, I have provided consulting services to Blue Cross and Blue Shield of Montana (BCBSMT) for more than five years. In so doing, I have had many opportunities to observe [the petitioner's] work within that organization. . . .

[The petitioner] has greatly advanced BCBSMT's statistical and analytical capacities. His research and practical applications have improved the rating and financial reporting/forecasting processes at BCBSMT, which result in better management decisions and more accurate pricing of insurance coverage. These improvements, in turn, help to promote rate stability and reduce the proportion of the population that cannot gain access to health insurance coverage.

█ does not specify the extent of the effect that the petitioner's work has had. The general statement that there has been an improvement is not sufficient, unless the petitioner submits evidence that most statisticians would be unable to effect even an incremental improvement.

Other past and present BCBSMT officials state that the petitioner has had a significant impact on health insurance, but they do not specify the changes or improvements that have resulted directly from the petitioner's work, and which could not have reasonably been expected to arise from the work of another qualified statistician. Professor █ of the University of Montana, who helped to train the petitioner, states that the petitioner's development of "generalized linear models, non-linear models, and time-series models with nonparametric correlation coefficients" is "a remarkable accomplishment." Prof. █ asserts that the petitioner's "work has been hailed as having significantly advanced our understanding of medical research and health care quality improvement research," but he does not specify by whom the petitioner's work "has been hailed." He adds that the petitioner's "achievements at the University of Montana have already had a national impact," although (as we have noted) the record contains little direct evidence of impact outside of Montana. If the petitioner's work is indeed more significant than that of other statisticians in the health insurance industry, and it has indeed had a national impact, then it is not unreasonable to expect corroborating evidence from outside of Montana, from witnesses other than the petitioner's past and present mentors, employers and co-workers. If these witnesses are not in possession of any evidence to establish the national impact of the petitioner's work, then the question arises as to how they know of that national impact and can reliably attest to it. Vague and general assertions from a narrow selection of witnesses close to the petitioner cannot suffice to establish the claimed national impact of the petitioner's work.

The record does not illustrate the nature or extent of the petitioner's contribution to health insurance. The petitioner's past history, showing statistical research over a broad variety of fields such as fire science, does not readily suggest that the petitioner will permanently work in the health insurance field, in which case it is not clear why permanent immigration benefits are necessary. The material submitted by the petitioner describes the petitioner's various contributions to statistics but does not explain why these contributions are nationally significant

or more important than the original work generally necessary for a student to earn an advanced degree in statistics.

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.