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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: California Service Center

Date: 29 SEP 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: 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 initially approved by the Director, California Service Center. On the basis of new information received and on further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the immigrant visa petition, and the reasons therefore, and ultimately revoked the approval of the petition on May 18, 2000. The matter 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 a member of the professions with the equivalent of an advanced degree. The petitioner seeks employment as a journalist/writer/publicist, and also asks the Service to take into consideration his volunteer work with a local high school and with the local office of Amnesty International, the human rights organization. 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 revoked the approval of the petition based upon the determination that the petitioner does not qualify for classification as an alien of exceptional ability or as a member of the professions holding an advanced degree. The notice of revocation also questions the extent to which the petitioner's efforts will serve the national interest.

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 regulation at 8 C.F.R. 204.5(k)(2) states, in pertinent part:

Advanced degree means any United States academic or professional degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree.

Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as an occupation for which a United States Baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.

The regulation at 8 C.F.R. 204.5(k)(3) sets forth the criteria for determining that the alien is a professional holding an advanced degree or an alien of exceptional ability in the sciences, the arts, or business:

(i) 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 a 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.

(ii) To show that the alien is an alien of exceptional ability in the sciences, arts, or business, the petition must be accompanied by at least three of the following:

(A) 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;

(B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought;

(C) A license to practice the profession or certification for a particular profession or occupation;

(D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;

(E) Evidence of membership in professional associations; or

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

(iii) If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility.

The petitioner's post-secondary education consists of a "National Diploma in Mass Communication" earned from 1983 to 1985, and a "University Diploma in Technology" in "Corporate Communication" earned from 1994 to 1996. The petitioner indicated that, since October 1996, he had worked as a volunteer for roughly 30 hours per week at Amnesty International.

In a letter submitted with his petition, the petitioner stated "I am a journalist by profession. . . . I am seeking an exemption of the requirement of a job offer in the national interest because I have proven ability and the potential to contribute in improving [sic] education for U.S. children." The petitioner's contributions to education amount to volunteer work as a tutor at a public high school in San Francisco, following "an orientation program." The petitioner added "I also have the potential, within my professional field, to develop viable projects which will benefit the U.S. economy," but he did not specify the nature of these projects.

The director initially approved the petition on September 23, 1997, but subsequently determined that the approval was in error. On December 1, 1999, the director issued a notice of intent to revoke, stating "the petition was deniable at the time of approval based on recently received evidence that the beneficiary may not have been eligible for the benefit sought, and that the statement of facts contained in the petition may not have been entirely true and correct." The director quoted from a Service memorandum pertaining to the petitioner's application to adjust status:

SUBJECT . . . stated that he had been working through temporary agencies and that he was currently working at [REDACTED] as accounts receivable administrator. The letterhead of [REDACTED] indicates that it is a United News & Media company. SUBJECT stated that his job involved the billing of companies that advertise in his employer's magazines, and doing accounting reports. . . .

SUBJECT is applying as a member of the professions with an advanced degree or of exceptional ability. It is not clear that he actually is a member of the professions or, if so, what his profession is. He states on his G-325 [Biographic Information] form that he is a freelance journalist. On the I-140 he lists the occupation in which he is seeking work as journalist/writer/publicist.

The record does not indicate that he has a bachelor's degree. . . . Neither of [the petitioner's] diplomas is equal to a bachelor's degree. . . . Also submitted are articles by SUBJECT from Nigerian publications, during the period 1988-93. The articles are commentary on various subjects, primarily the arts. There is no evidence that these writings represent a full-time occupation or that SUBJECT was paid for them.

Even if SUBJECT were classifiable as a professional, it is apparent that he does not have an advanced degree or equivalent. He therefore must establish that he is an alien of exceptional ability, i.e. a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. Again, it is not clear exactly what SUBJECT's specialty is. Whatever the specific field is, no documentation has been submitted to show how he rises above the level of expertise normally encountered in that field. Except for the articles published over a period of 5 years (1988-93), SUBJECT's background is that of attending school and volunteer work. . . .

He has not established that he is a professional, or holds an advanced degree, or that he is an alien of exceptional ability as these terms have been defined for INS purposes.

The director stated that the petitioner may have misrepresented himself as a member of the professions holding an advanced degree, and found that the petitioner's work activities are not commensurate with those of an advanced degree professional or an alien of exceptional ability.

In response to the notice of intent to revoke, the petitioner asserts that his "interview with the adjudication officer . . . was very brief," and that "it appears . . . that none of the institutions, organizations and contact persons documented in the petition was contacted, either for fact finding or for verification purposes." With regard to the confusion regarding his field, the petitioner states "[m]y main profession is Journalism, by formal academic training and by practical experience. But I also fall into other media related occupations, such as Publicist, Communication Specialist or Writer." The petitioner states that he did indeed receive payment for his published articles, but he does not document this claim or specify how much he was paid. The petitioner submits no evidence that he has ever earned his living as a journalist or in any journalism-related field.

The Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, page 138, indicates that "[m]ost employers [of news analysts, reporters and correspondents] prefer individuals with a bachelor's degree in journalism, but some hire graduates with other majors." This information suggests that journalism qualifies as a profession, in that it requires a bachelor's degree, but the fact that the petitioner aspires to be a journalist does not mean that he meets the minimum qualifications.

The petitioner states that his "academic qualifications could be considered as a comparable equivalence of a bachelor's degree," and that "INS regulations make provision for" such equivalency. The regulations, however, contain no such provision. An alien who holds no advanced degree can establish equivalency through a bachelor's degree and post-baccalaureate experience, but there is no comparable provision for an alien with no bachelor's degree. As cited above, the regulation at 8 C.F.R. 204.5(k)(3)(i) requires the petitioner to submit "[a]n official academic record" of either "a United States advanced degree or a foreign equivalent degree" or "a United States baccalaureate degree or a foreign equivalent degree." A combination of foreign

degrees, none of which is equivalent to a U.S. baccalaureate, cannot in the aggregate form a single foreign equivalent degree.

The petitioner cites a credential evaluation report, which indicates that the petitioner has "two years of undergraduate study in mass communications and two years of undergraduate study in corporate communications at a regionally accredited institution in the United States." The petitioner asserts that the two periods of study "combine to a total of four years of undergraduate studies – the same period of academic training required for a bachelor's degree." The evaluation report, however, does not indicate that the petitioner holds any degree that is equivalent to a bachelor's degree. Furthermore, there is more to a bachelor's degree than a fixed number of years of study; one must accumulate a certain number of credit hours in one's major, for instance. The fact that the petitioner spent two years in college and then, nearly a decade later, spent another two years studying a related but distinct subject, does not mean that the petitioner holds a bachelor's degree or that he is a member of the professions. For the above reasons, we cannot find that the petitioner is a member of the professions, or that he holds an advanced degree or its equivalent.

Because the petitioner is not a member of the professions holding an advanced degree, he cannot qualify for the classification sought unless he qualifies 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. We note that the regulation at 8 C.F.R. 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered." Therefore, evidence submitted to establish exceptional ability must somehow place the alien above others in the field in order to fulfill the criteria below; qualifications possessed by every member of a given field cannot demonstrate "a degree of expertise significantly above that ordinarily encountered." For example, every physician has a college degree and a license or certification; but it defies logic to claim that every physician therefore shows "exceptional" traits.

The petitioner claims to have met the following three criteria. Because the petitioner claims only three criteria, failure to meet even one criterion renders him ineligible for the classification.

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 discussed above, the petitioner holds two-year degrees in Mass Communication and Corporate Communication. We have, however, cited Department of Labor documentation indicating that a bachelor's degree is a standard requirement for jobs in journalism. Given the petitioner's lack of a required degree in the field of journalism, we cannot find that the petitioner's two-year degrees represent "a degree of expertise significantly above that ordinarily encountered" among journalists in the United States.

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

The petitioner states that his aforementioned diplomas constitute, in the aggregate, "a license in itself to practice the professions relating" to those diplomas. The petitioner also holds "a certification from Radio France International attesting to a proficiency training in radio journalism."

If a two-year degree is sufficient to automatically confer licensure in a given field, then such a license would seem to be a mark of minimum competency rather than a mark of exceptional ability.

Similarly, "proficiency" is not exceptional ability. The petitioner has not shown that he has attained a level of licensure or certification that is reserved for highly trained individuals in a given field. Licenses or certifications that are universal or mandatory cannot serve to distinguish those workers who possess a degree of expertise significantly above that ordinarily encountered in the field.

Evidence of membership in professional associations.

The petitioner submits evidence that he is an associate member of the Nigerian Union of Journalists. The record contains no evidence about this union. If it is a "union" in the sense of a trade guild or collective bargaining organization, then it is not clear that associate membership is a sign of exceptional ability. The petitioner has also not demonstrated that "associate member" represents a class of membership for which most journalists do not qualify. If membership is contingent merely on employment in the field, or payment of dues, then it does nothing to demonstrate a level of expertise significantly above that ordinarily encountered in the field.

The petitioner adds "I have personal business plans that would require more than ordinary skills to conceive and execute." The petitioner's estimation of his own business plan is not evidence of exceptional ability. Furthermore, the record contains no evidence that the petitioner's plan has actually been implemented. Thus, even if we were to find that those plans did require exceptional ability, there is no evidence that the petitioner has the ability necessary to actually put those plans into practice.

The petitioner asserts that he has also shown exceptional ability as a volunteer for Amnesty International and a local high school. While the petitioner has volunteered a substantial amount of his time to worthy causes (human rights and education), volunteer work is, by definition, unpaid, and therefore it is not a viable long-term option for the petitioner to support himself. The petitioner will presumably need to work in an income-generating occupation for his support. Also, unpaid volunteer work is not "employment" *per se* and thus it is not properly considered in the context of an employment-based immigrant classification. We cannot find that an alien qualifies for an employment-based immigrant classification based on his intention to perform charitable volunteer work.

With regard to his employment in a non-journalistic capacity, the petitioner states:

It may appear as if I did not seek employment in the Journalism field as was intended in my petition. This is not true. After receiving the notice of approval, I requested to correspond for the Voice of America. . . . However, I dropped the

idea when I learned that the remuneration was going to be for special reports only, as they already had a correspondent stationed in the region to cover regular news story. That arrangement was not convenient for me. . . . I felt legally obliged to temporarily find work in other professions before pursuing my ultimate goal as included in the petition.

Thus, the petitioner appears to indicate that he made one attempt to secure employment as a journalist before taking a position in [REDACTED] accounts receivable department. The petitioner submits evidence that his employer "is a major recognized corporation" and that he has received excellent performance ratings, but these observations are peripheral to the central point, which is that despite the claim that he will serve the national interest through his work as a journalist, he has apparently never worked full time as a journalist. Furthermore, despite his claimed exceptional ability in journalism, there is no evidence of demand for his services among U.S. media and news services. Therefore, the petitioner's employment outside of journalism, after the petitioner secured an approved petition as a journalist, necessarily raises questions. These questions ultimately led to reevaluation of the petitioner's eligibility for the underlying immigrant classification.

The petitioner credibly argues that he intended no deliberate misrepresentation on his petition. Nevertheless, he has not overcome the director's finding that he does not qualify for the classification sought, and did not so qualify at the time he filed the petition.

The director revoked the approval of the petition, in a notice that repeated many of the earlier statements from the notice of intent to revoke. The director also noted that the petitioner has not shown that his past or future work will have a national rather than local impact.

On appeal, the petitioner states "[t]he decision does not clearly confirm whether or not I overcame the grounds for revocation. . . . The INS should confirm that its denial is not based on lack of credibility, but on the fact I do not have advanced degree and I have not met the legal standard for national interest waiver." The director's decision specifically states that "[t]he petitioner has not submitted sufficient evidence in rebuttal to the Service's notice of Intent to Revoke and has not overcome the grounds for revocation." This statement, combined with the repetition of language from the notice of intent to revoke, clearly indicates that the director revoked based on the grounds stated in the earlier notice.

The petitioner states "[t]he hurtful, wrong impression [sic] of misrepresentation and lack of credibility was both morally and professionally wrong," and prejudiced the outcome of the proceeding. While we agree with the petitioner that there is no evidence of deliberate misrepresentation, a review of the record as a whole shows that the director was entirely justified in finding that the petitioner does not qualify for the underlying immigrant classification. In light of such a finding, the revocation would have been legally correct with or without an additional finding of misrepresentation.

In a subsequent brief, the petitioner contests the director's references to the petitioner's national impact. The petitioner asserts that this language derives from a precedent decision, Matter of New York State Dept of Transportation, 22 I&N Dec. 215 (Comm. 1998), which was not yet in effect when his petition was approved in 1997. The petitioner states that, pursuant to stated Service policy, national interest waivers approved prior to the publication of Matter of New York State Dept. of Transportation were not to be revoked based on that precedent decision.

The director's assertions regarding national impact, however, formed only a minor part of the multi-page notice of revocation. The director had also discussed, at length, the petitioner's ineligibility for classification either as a member of the professions holding an advanced degree or as an alien of exceptional ability. The subsequent passage of a precedent decision does not in any way limit the director's statutory authority under section 205 of the Act to revoke approval of a petition that should not have been approved in the first place.

The petitioner maintains, on appeal, that his adjustment interview was not conducted properly. Regardless of the petitioner's dissatisfaction with the interview, the evidence in the record supports the core grounds for revocation. For instance, the petitioner simply does not hold a bachelor's degree, a fact that is not affected in any way by the duration or thoroughness of his adjustment interview.

The petitioner's appellate brief focuses on the precedent decision, the allegation of misrepresentation, and the adjustment interview. The petitioner has addressed these issues with varying degrees of effectiveness. He has not, however, addressed at all the critical issue of eligibility for the immigrant classification. Because the petitioner has not addressed these major grounds for revocation, he has failed to establish that the director erred in revoking the approval of the petition.

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.