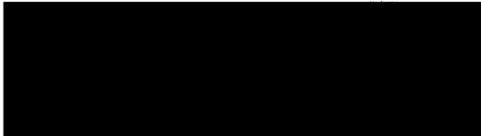


B5

U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

PUBLIC COPY

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



APR 08 2003

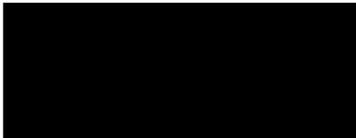
File: EAC 01 211 52756 Office: VERMONT SERVICE CENTER Date:

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)

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

ON BEHALF OF PETITIONER:



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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Elizabeth Hayward
for 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 Administrative Appeals Office on appeal. The appeal will be dismissed.

In this decision, the term “prior counsel” shall refer to [REDACTED] who represented the petitioner prior to the filing of the appeal. The term “counsel” shall refer to the present attorney of record.

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, a trainer of health care workers, seeks to employ the beneficiary as its director of education and as an instructor. The petitioner has employed the beneficiary in the latter capacity since 1999. 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 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.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements 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 the pertinent 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 regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now the Bureau] 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.

Documentation in the record includes a description of the beneficiary’s duties at the petitioning institute:

Teaching of Anatomy and Physiology and Allied Administration to Medical Assistant Course Students.

Teaching Anatomy & Physiology and practical procedures to EKG and Phlebotomy and Pharmacy Tech Students.

Administrator for student affairs (advisor, recruitment, and placement).

This documentation indicates that the beneficiary’s immediate supervisor will be the director of education, but a letter from Dr. Shehta Abudalal (whose job title is unspecified) indicates that the petitioner “has offered [the beneficiary] a position as Director of Education.”

Prior counsel states that the beneficiary “has reached an enhanced professional level” and “achieved a high level of knowledge in the sciences,” gaining “extensive experience in teaching to doctors and other medical staff the art of medicine, notably the intricacies of the Ear, Nose and Throat specialty area.” Prior counsel adds that the beneficiary has written several published journal articles and given presentations at international medical conferences. The record shows that most of these articles are case reports dating from the early 1980s. Prior counsel asserts that the beneficiary “eventually may want to apply for employment in a college, university, or

research laboratory, [but the petitioner's] offer of employment will suffice for now." Prior counsel states "[i]t is in the best interest of the United States to cultivate and retain persons like [the beneficiary] to train and enhance the skills of residents who will fill much needed medical technical positions."

Along with documentation establishing the beneficiary's education and credentials, the petitioner submits several witness letters. The witnesses, primarily the beneficiary's former co-workers, employers, and professors, attest to the beneficiary's skill and experience but do not explain why it is in the national interest for the beneficiary, rather than another qualified worker, to fill the instructor position at the petitioning institute. Indeed, many letters do not mention the beneficiary's skill as an instructor at all, focusing instead on his work as a surgeon (an occupation the beneficiary does not purport to seek). A number of the letters are recommendation letters of the kind routinely issued to departing employees or graduating students.

The director requested further evidence that the petitioner has met the guidelines published in *Matter of New York State Dept. of Transportation*. In response, the petitioner has submitted arguments from prior counsel and further supporting documents. Prior counsel argues that the petitioner "has an extensive day and night program for the training of persons, particularly young people in the medical assistance fields." This statement speaks to the intrinsic merit of the work performed by the petitioner's instructors, but it does not follow that the petitioner's employees should be exempt from the job offer/labor certification requirement that, by law, normally attaches to all advanced degree professionals.

Prior counsel asserts that the petitioner "is seeking to become the best in its field economically and qualitatively" in order to "give an edge to their graduates in the job market." All worthwhile vocational training facilities strive to foster excellence among their graduates, but the petitioner's desire to outperform rival training facilities is not a national interest issue. It is not generally in the national interest to ensure that one U.S.-based company outperforms other U.S.-based companies in the same field.

Prior counsel asserts that the area surrounding the petitioning institute "has at least six major hospitals, which are in need of qualified medical and medical technical assistants. This is an area which is underserved in medical and medical assistant technicians." The petitioner has not shown that the beneficiary will remedy this local worker shortage more rapidly or effectively than other professionals who are qualified to fill the position at the petitioning employer. Even then, this claimed but uncorroborated shortage is at best a local issue. While section 203(b)(2)(B)(ii) of the Act allows for waivers in medically underserved areas, these waivers are expressly limited to physicians practicing medicine. The provisions of that section of law do not extend to individuals who are more indirectly involved with health care, such as trainers of medical technician assistants.

Arguments regarding the scarcity of workers in the field, or the unwillingness of highly trained experts to take the relatively low-paying position offered by the petitioner, speak to the availability of qualified workers. Such arguments are already addressed by the labor certification process itself, and due to their general nature they do not establish that it is in the national interest for this particular beneficiary to fill the instructor position at the petitioning institute.

The director denied the petition, stating “[t]he record does not show how the impact of the beneficiary’s individual efforts will be felt on a national scale.” The director added that the petitioner’s arguments that the position requires “an individual who possesses a specific educational background and work experience . . . could be easily articulated on a labor certification.”

On appeal, the petitioner submits a brief from counsel. Counsel states:

[The beneficiary] will be employed in the education field, training, for the most part young people in the medical field in an area which is underserved by qualified medical and medical assistance technicians. . . .

The petitioning company in addition to training young people in the medical field, trains young people who would obtain employment in satisfying jobs in an underserved occupational field and industry which would improve both the local and national economy.

The petitioning company is a post secondary training institute that is improving health care and improving education programs for U.S. youth, therefore the prospective employee is seeking employment in an area of intrinsic national need and the benefit would be national in scope.

Given the function of the petitioning company and the extreme importance of the work it is performing the education of U.S. youth and improved health care, and given the qualifications of the prospective employees the national interest would be adversely effected [sic] if a labor certification were required.

Counsel’s arguments, similar to those previously advanced by prior counsel, are not persuasive. Counsel argues, in effect, that the petitioner’s employees ought to be subject to a blanket waiver based on “the extreme importance of the work” undertaken at the petitioning institute. Because the record contains nothing at all to distinguish the petitioner from other vocational training centers for medical assistants, this argument applies to all such businesses. Because the argument equates the training of medical workers with the improvement of health care, this argument should also apply to every medical, nursing, and dental school in the United States.

As noted above, section 203(b)(2)(B)(ii) of the Act creates a blanket waiver for certain physicians. The existence of a specific section of law creating this waiver demonstrates that such blanket waivers are not implied by the basic statutory language at section 203(b)(2)(B)(i); if that section of law implied blanket waivers, then additional language creating such a waiver would have been redundant. 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). Because the statute mentions no blanket national interest waivers except for certain physicians, we cannot presume that a blanket waiver also exists for individuals who train health care workers.

Absent a blanket waiver, the petitioner must show that the alien offers some substantial benefit that is not routinely found among trained workers in the field, and thus that it would be in the national interest to ensure that this alien, rather than another qualified worker, fills the position. Counsel, on appeal, observes that the beneficiary “has an extensive medical background and is a trained physician” but the record says nothing about the beneficiary’s track record (if one exists) as a trainer of medical personnel of the type trained by the petitioner. The uncertified Form ETA-750A submitted with the petition indicates that a “medical degree with teaching and administrative experience [and] command of modern medical procedures and literature” are, in fact, minimum requirements for the position. Counsel therefore argues, in effect, that the beneficiary ought to receive a waiver because he is qualified for the position.

Furthermore, the number of workers that the beneficiary could personally train would necessarily be very limited, to an extent that would be vanishingly attenuated at the national level. According to the Form I-140 petition, the petitioner has seven employees and therefore it is not immediately apparent that the petitioner, or its employees, would be capable of generating enough trained health care workers to have a significant impact. Even if the petitioner were much larger, the petitioner has not shown that its ability to offer proper vocational training would be impaired if it hired a different fully qualified instructor in lieu of the beneficiary. Even if no other trained workers are interested in the position (as prior counsel has implied), such a situation would not justify a waiver. Indeed, a basic purpose of labor certification is to demonstrate that a U.S. employer must hire an alien because no qualified U.S. worker is available. The circumstances described by the petitioner and by the petitioner’s attorneys appear to conform to the very situation for which labor certification exists in the first place.

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, 8 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.