

85

U.S. DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
BCIS, AAO, 20 Mass, 3/F  
Washington, D.C. 20536



File: [REDACTED] EAC 01 224 58950 Office: VERMONT SERVICE CENTER

Date: **APR 16 2003**

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)

ON 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.

  
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.

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 member of the professions holding an advanced degree. The beneficiary seeks employment as a geo-technical and structural engineer consultant. 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 concluded 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.

(i) Subject to clause (ii), the Attorney General may, when the Attorney General 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 application for the national interest waiver cannot be approved. The regulation at 8 C.F.R. 204.5(k)(4)(ii) requires that in order "[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's decision does not appear to have informed the petitioner of this critical omission. We will consider the merits of the petitioner's national interest claim below.

The beneficiary obtained a Ph.D. in engineering from the University of Pittsburgh in August 1990. 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 pertinent 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.

The documentation accompanying the petition appears to indicate that the beneficiary's proposed employment will be as a self-employed geo-technical engineer consultant providing design and analysis services in a variety of applications. These will include landfills and flood control structures, as well as the development of improved instructional materials for use in academia and commercial laboratories. The director did not contest the intrinsic merit and national scope of such endeavors. The remaining determination is whether the petitioner has established that the beneficiary 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.

Together with copies of the beneficiary's published articles, academic credentials and documentation pertaining to his previous projects, the petitioner submits several witness letters attesting to the beneficiary's expertise. [REDACTED] an associate professor with the University of Pittsburgh, indicates that he was the beneficiary's master's and Ph.D. thesis advisor and has maintained a long-

standing professional relationship with the beneficiary. Professor [REDACTED] describes the beneficiary as the best student he has ever had. Professor Vallejo states:

Since earning his PhD, [the beneficiary] has used his geotechnical expertise to solve critical problems relating to the environment, including landfill design, and infrastructure, such as slope stability as it applies to highway design and urban safety. His informed and careful work is of obvious importance and utility to the nation as a whole.

\* \* \*

For his doctoral research, [the beneficiary] did groundbreaking work relating fracture mechanics to solving geotechnical engineering problems. His Ph.D. thesis, entitled *Mechanics of Crack Propagation and Interaction in Stiff Clays*, has yielded professional papers which have been published in prestigious journals and in conference proceedings of national and international scope.

Having outstanding academic credentials does not demonstrate eligibility for the national interest waiver. Furthermore, Dr. [REDACTED] does not address how the beneficiary's research achievements distinguish him from other geotechnical engineers who have long since completed their educational training.

[REDACTED] a professional geologist, has worked with the beneficiary in several engineering design projects including federal superfund waste disposal sites. Mr. [REDACTED] states:

Some of the design projects involved the forensic investigation of site physical failures, and a high level of technical skill was required and demonstrated by [the beneficiary] in these projects. By virtue of education and the type and range of work experience, [the beneficiary] has acquired knowledge and skills to qualify him as an expert in his engineering discipline, and is among a very small number of professionals in this country who are so qualified. . . . His professional reputation is in good standing within the sphere of those involved with geotechnical matters in this region, and indeed, he is the current chairman of the Pittsburgh Geotechnical Group of the American Society of Civil Engineers.

Mr. [REDACTED] clearly has a high regard for the beneficiary's skills, but general assertions as to the beneficiary's professional standing do not persuasively distinguish him from others in his field. The contention that there are a small number of given workers in a field, regardless of the nature of the occupation, does not constitute a basis for a national interest waiver. The labor certification process was designed to address the issue of worker shortages. Any objective qualifications necessary for the performance of the professional position can be articulated in an application for alien labor certification.

[REDACTED] a professional engineer, employed the beneficiary to complete the geotechnical design for several projects. Mr. [REDACTED] praises the beneficiary's "unique knowledge and skills" in the field of geosynthetics, an evolving area in engineering. He describes the beneficiary's expertise as a

critical part of the design approval of landfill expansions in Ohio involving steeper final slopes, and maintains that these designs were the first such landfills approved in Ohio. Mr. [REDACTED] relates that because of the beneficiary's "strong background, I and other engineers have used [the beneficiary] to perform the required geotechnical testing and analyses for landfill design and construction, necessary to operate a sanitary landfill."

Anthony Iannacchione, a deputy director of the National Institute for Occupational Safety and Health (NIOSH) Pittsburgh Research Laboratory, became acquainted with the beneficiary while Dr. [REDACTED] attended graduate school. Dr. [REDACTED] explains that geotechnical engineers evaluate the behavior of supports that stabilize strata and monitor the movement of harmful substances through the ground. He characterizes the beneficiary as one of the country's leading experts on the theory of crack propagation and commends the beneficiary's doctoral work in the development of mathematical models that predict fracture propagation patterns.

[REDACTED] a vice-president of Gannett Fleming, Inc., has known the beneficiary professionally for several years and offers commendation of the beneficiary's active participation in the American Society of Civil Engineers (ASCE). He relates that the beneficiary became an associate member upon graduation from the University of Pittsburgh and earned a "Member" grade in the Society in 1993. Mr. [REDACTED] describes the Member grade as having specific educational and experience requirements applying to both practicing engineers and engineering teachers. There is no indication from Mr. [REDACTED] description of the ASCE bylaws that an individual obtaining a Member grade in the ASCE must have demonstrated outstanding ability as an engineer, rather than merely showing that he or she has had "definite responsibility for engineering work of substantial importance."

Even if the beneficiary's admission to the ASCE at the "Member" level represented an outstanding achievement, the regulations at 8 C.F.R. 204.5(k)(3)(ii) provide that "memberships in professional associations," and "recognition for achievements and significant contributions to the industry or field by peer, governmental entities, or professional or business organizations" are two kinds of evidence of exceptional ability, a classification normally requiring a labor certification. We cannot conclude that satisfying two requirements or even the requisite three requirements for this classification makes one eligible for a waiver of the labor certification process.

The record also includes a 1993 letter of appreciation from [REDACTED] a division president of Waste Management of Ohio, Inc., in which he thanks the beneficiary for his time and effort and states that his "dedication and expertise were a major factor in the success of the project." A 1999 letter from [REDACTED] a manager at NTH Consultants, Ltd, to [REDACTED] of Countywide Recycling and Disposal Facility, also contains a reference to the beneficiary's significant on-site experience and very good reputation with the Ohio Environmental Protection Agency (OEPA). While both letters show that the beneficiary has successfully performed at various engineering projects, neither letter demonstrates the beneficiary's impact on his field as a whole.

All of the beneficiary's testimonials are past or present supervisors, mentors, collaborators or colleagues. Letters from those with direct ties to the petitioner certainly have value, because such persons have direct knowledge of the beneficiary's contributions to a specific research project;

however, their statements do not show that the beneficiary's work has attracted widespread attention throughout the field on its own merits, as might be expected with research findings or achievements that are especially significant.

The beneficiary has submitted evidence of three published articles and a conference paper. The record contains nothing showing that the presentation or publication of one's work is rare in the beneficiary's field.

When judging the influence and impact that the beneficiary's work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon the beneficiary's findings. Frequent citation by independent researchers, on the other hand, would demonstrate more widespread interest in, and reliance on, the beneficiary's work. Here, the record contains no evidence that independent researchers in the geo-technical engineering field have cited the beneficiary's work.

In denying the petition, the director acknowledged the importance of the beneficiary's projects but found that the record had not established that the national interest would be served in waiving the normal labor certification process.

On appeal, the petitioner submits additional documentation indicating that the beneficiary's consulting firm also includes a projected mission of promoting partnerships between technical service firms in the United States and Nigeria. While this material supports the first two prongs of the national interest waiver determination pursuant to *Matter of New York State Dept. of Transportation, supra*, it does nothing to establish that the beneficiary has already influenced his field as a whole to any significant degree.

It is apparent that the beneficiary has excelled academically and is a talented engineer. Nevertheless, his superior ability is not by itself sufficient cause for a national interest waiver. The benefit that the petitioner presents to his field of endeavor must greatly exceed the "achievements and significant contributions" contemplated in 8 C.F.R. 204.5(k)(3)(ii)(F) for an alien of exceptional ability. It is not sufficient to state that the alien possesses unique credentials or an impressive background, as does Mr. [REDACTED] one of the beneficiary's witnesses. The labor certification process exists because protecting jobs and employment opportunities of U.S. workers having the same objective minimum qualifications as an alien seeking employment is in the national interest. The alien seeking an exemption from this process must present a national benefit so great as to outweigh the national interest inherent in the labor certification process.

In this case, we cannot conclude from the witness letters and other evidence of the petitioner's work that this beneficiary's contributions to the field of geo-technical engineering have been of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks.

As is clear from the plain wording of the statute, it is 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 the national interest. Similarly, 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. Based on the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification would 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. In this case, the petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.