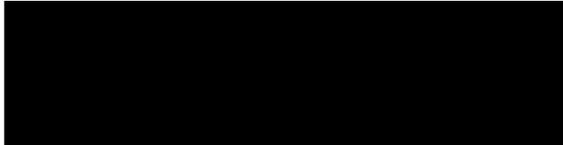


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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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

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



File: WAC-01-253-61611 Office: California Service Center

Date:

1 APR 17 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:

PUBLIC COPY



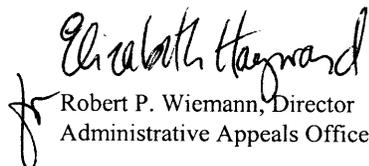
INSTRUCTIONS:

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 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California 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 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 beneficiary qualifies 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.

(i) . . . 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 beneficiary holds a Master's degree in Education from East Tennessee State University. The beneficiary's occupation falls within the pertinent regulatory definition of a profession. The beneficiary 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 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 the 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.

We concur with the director that the beneficiary works in an area of intrinsic merit, web design of online educational courses. The director concluded that that the proposed benefits of the beneficiary's work would not be national in scope. On appeal, counsel faults the director for providing no explanation for this conclusion. Initially, counsel asserted that the beneficiary's work on the California Virtual Campus Region IV (CVC4) will have a national impact because it is a leading center for distance education, well known nationally, and is a model program. The appropriate inquiry is whether the beneficiary's occupation has the potential for a national impact. Designing and maintaining the website is not merely incidental to the beneficiary's position. Rather, it is the main component of being a webmaster. We acknowledge that a website can be accessed nationwide. Thus, we conclude that the potential benefits of the beneficiary's work could be national in scope. The petitioner must still demonstrate, however, that the beneficiary 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 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 beneficiary's contributions in the field are of such unusual significance that the beneficiary merits the special benefit of a national interest waiver, over and

above the visa classification she seeks. By seeking an extra benefit for the beneficiary, the petitioner assumes an extra burden of proof. A petitioner must demonstrate the beneficiary's past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

██████████ art professor and Project Director of the CVC4 program, discusses the importance of the CVC4 program, which provides access to students who are unable to attend classes or for whom, the colleges have no room. The substantial merit of virtual education has been acknowledged above. Mr. ██████████ also lists the requirements for the project's webmaster and instructional design media specialist and explains how the beneficiary meets these requirements. He asserts that that the CVC4 project conducted a one-year nationwide search to find someone with the beneficiary's unique qualifications. While Mr. ██████████ asserts that the beneficiary has contributed to the CVC4 project, the contributions he lists are general praise of her knowledge, creativity, and professionalism. He does not identify any specific contributions to the field of virtual education.

██████████ a counselor and consultant for the CVC4 project, asserts that the beneficiary developed and implemented student support service models that have received statewide and national recognition as well as serving as models for development nationwide. Specifically, Ms. Ostash references the beneficiary's needs-assessment survey, online essay assessment to assist students in selecting appropriate level English courses, and an "early alert" process for identifying students having difficulty with their online courses.

Dr. ██████████ an associate professor in the computer science department at Walters State Community College in Tennessee, claims to consult the CVC4 website often regarding distance education issues. Dr. ██████████ asserts that individuals with the beneficiary's experience are in high demand and that she possesses the knowledge and skills for her position. Dr. ██████████ concludes that the beneficiary is considered outstanding in the field and that her knowledge, skills, responsibilities, performances, and accomplishments "exceeded the vast majority and ranked her top in the field." While he also concludes that she has "proven to be invaluable to the nation's education system," he does not explain how her work on CVC4 has influenced distance learning beyond California. We note that Dr. ██████████ was one of the beneficiary's professors while she was studying for her Master's degree in Tennessee.

██████████ a professor of Philosophy at El Camino College, asserts that he has helped develop El Camino's own online program. He asserts that his experience with online education has made him familiar with the characteristics needed for successful support personnel and that he owes the success of his own online course to the beneficiary. While Professor Pielke asserts that CVC is "recognized and celebrated in numerous publications" the record does not contain such publications. Without reviewing such publications, we cannot determine whether they were printed prior to the beneficiary's association with CVC in general and CVC4 in particular or whether they single out her contributions to CVC.

In his request for additional evidence, the director noted that the record did not "demonstrate that the [beneficiary] has been thus acknowledged by independent experts in the [field], as opposed to

those individuals who had worked directly with the [beneficiary].” In response, the petitioner submitted more letters from the beneficiary’s colleagues in California and former colleagues from Tennessee.

██████████ Director of Media Services at the University of California (UC), Santa Cruz, discusses the importance of the CVC4 project and the uniqueness of the beneficiary’s academic background in English, computer science, and instructional technology. He asserts that other colleges and universities nationwide are modifying CVC for their own online programs but provides no examples.

██████████ Director of the CVC Professional Development Center, asserts that most California colleges do not have someone with the beneficiary’s knowledge and experience on their staff and that she is one of the “very few best IT professionals in the online education [field] nationwide.” Mr. ██████████ asserts that students nationwide participate in CVC courses and that the loss of the beneficiary would cause those students to suffer.

██████████ a professor at the American River College in Sacramento, positively evaluates the beneficiary’s performance based on Professor ██████████ observations of the beneficiary’s work. Dr. ██████████ Dean of Planning and Development at Rio Hondo College in Whittier, California and Director of the CVC2 project, provides similar information to that discussed above, asserting that the beneficiary “is one of few experts in the United States with the very specialized knowledge in Blackboard account management.” Dr. ██████████ further asserts that without the beneficiary’s expertise, Rio Hondo College would not be able to serve as a provider of online courses to eArmyU, which uses Blackboard as its course management system. Dr. ██████████ acknowledges that Rio Hondo College has only applied to be such a provider. Finally, Dr. ██████████ asserts that the CVC is a partner in the Advanced Distance Learning Co-Lab project sponsored by the Department of Defense. The record, however, contains no letters from high-level officials of the U.S. Army or Department of Defense in support of the waiver request for the beneficiary.

Dr. ██████████ an instructional technologist at Emory University, indicates that he earned his Ph.D. in Knoxville, Tennessee. He asserts that the CVC project is a pilot project nationwide and that the beneficiary is “a key technology expert in the CVC project.” Dr. ██████████ further asserts that the beneficiary has designed online classes accessible to those with disabilities in compliance with the Americans with Disabilities Act. Dr. ██████████ does not, however, indicate that he has implemented any of her contributions at Emory University.

While counsel asserts that the waiver request is not based on a shortage, several references discuss the uniqueness of the beneficiary’s background in education and computer science. It cannot suffice to state that the alien possesses useful skills, or a “unique background.” Special or unusual knowledge or training, such as experience with Blackboard, 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. *Id.* at 221. Counsel further asserts that the labor certification process is inapplicable because it will take longer than the six years available to the beneficiary on her H-1B nonimmigrant visa. 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.

It remains, the record consists mostly of letters from the beneficiary's colleagues in California and from Tennessee. Further, some of these letters are from professors and counselors with only an incidental knowledge of web design. While these letters discuss the importance of the CVC project and the beneficiary's skills to make this project work, the record fails to demonstrate that the beneficiary has already influenced the field of online education as a whole. The record does not contain any letters from providers of online Services outside California who have incorporated the beneficiary's CVC4 designs into their own online courses. As stated above, we 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

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.