

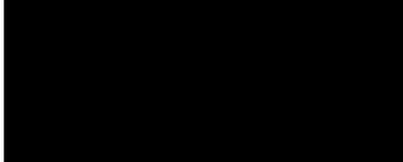
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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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invasion of personal privacy**

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



File:  Office: TEXAS SERVICE CENTER

Date:

APR 21 2000

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**

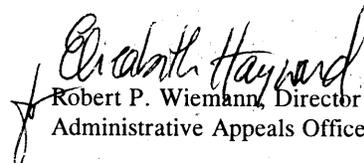
INSTRUCTIONS:

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, Texas 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 seeks to employ the beneficiary as a medical director/medical educator. 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 beneficiary holds a medical degree from the University of Mexico in 1980. He also completed a surgical and medical specialization program in oncology in 1988. The director did not dispute that the beneficiary 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 labor certification process 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.

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.

The petitioner seeks to employ the beneficiary to present medical educational programs to other health care professionals and the general public, and to provide consultation services to individual client companies. We concur with the director that the petitioner would employ the beneficiary in an area of intrinsic merit, glycobiology and nutritional health. We disagree, however, with the director's conclusion that the proposed benefits of the beneficiary's employment would not be national in scope. The proposed job responsibilities with the petitioner include public speaking, radio interviews and web transmission of medical educational programs to both local and national audiences, with a view toward increasing the national distribution of nutritional products promoted by the petitioner. The occupation has the potential for nationwide impact.

It remains to determine 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 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 generally do not accept the argument that a given project is so important that any alien qualified to work on it 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 that is

sought. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement by the beneficiary with some degree of influence on the field as a whole. *Matter of New York State Dept. of Transportation*, at 219, n.6.

The petitioner states:

We need to have a highly educated professional with a deep knowledge and understanding in this new science, new technology and new research, who can be able to provide scientific and truthful information about glycobiology and glyconutrients to health care providers all over the country. The beneficiary of this petition has the educational level, the scientific knowledge about glycobiology and glyconutrients, the knowledge about health and disease process and cultural and economical factors needed to be able to establish contact with healthcare professionals and with the general population and he will be in charge of conducting educational seminars and symposiums to healthcare providers or directly to the general population.

\* \* \*

The communication problem and the language barrier due to the immigration phenomenon have created a big problem and great challenge for the federal government. The main immigration change is due to the rapidly increasing Hispanic population. This is the fastest growing ethnic group in US. . . . This creates a language and communicational barrier between this [sic] people and the healthcare providers. . . . They neglect to seek the medical care, but only because they are scared of being unable to communicate with medical and healthcare providers.

The petitioner states its need to fill the position with a knowledgeable, bilingual professional, and offers generalized assertions of the beneficiary's qualities, but does not discuss or specifically document the beneficiary's past history of achievement resulting in any significant level of influence on the field as a whole. *Matter of New York State Dept. of Transportation, supra*.

The petitioner also submits several articles discussing the importance of glyconutrients, the significance of the field of glycobiology related to human nutrition, and the difficulties of non-English speakers accessing the United States health care system. The importance of glycobiology and language barriers for non-English speakers is not in dispute. We note that none of the submitted articles mention the beneficiary by name or in any way refers to him as an expert in glycobiology. Pursuant to published precedent, the overall importance of a given project such as a nutritional educational program is insufficient to demonstrate eligibility for the national interest waiver. By law, advanced degree professionals and aliens of exceptional ability are generally required to have a job offer and a labor certification. To argue that medical professionals engaging in nutritional education in glyconutrients automatically serve the national interest is to contend that the labor certification process should never be enforced for this occupation. Congress plainly intends the national interest waiver to be the exception rather than the rule.

A review of the beneficiary's ETA-750B, Statement of Qualifications of Alien, indicates that the beneficiary is bilingual. The petitioner asserts that this skill enhances his eligibility for a national interest waiver in delivering medical nutritional education to Hispanics. Being bilingual in a job requiring a Spanish speaking professional does not automatically warrant a national interest waiver. If linguistic skills are required for a given position, they can be articulated on an application for labor certification.

The record contains copies of several certificates indicating that the beneficiary completed a course in medical terminology in 1997; obtained a certificate for seventeen hours of continuing nurses' education in "advanced cardiac life support" in 1998; received a certificate for completing an EKG Monitor class in 1999; completed re-certification as a CPR healthcare provider in 2001; and that he successfully completed six hours of continuing medical education in glycobiology in April 2002. We note that the course in glycobiology is the only documentation in the record that independently corroborates that the beneficiary has any expertise in that field. An alien cannot demonstrate eligibility for the national interest waiver simply by establishing that he has a certain level of training and education that could easily be articulated on an application for labor certification.

It is notable that the record contains no evidence that the beneficiary has had any influence in the field such as testimonials from independent medical experts, publication by the beneficiary of influential articles in any related medical field, or widespread adoption of any educational model the beneficiary may have developed. The petitioner's arguments that the beneficiary's skills and educational background equip him to have national impact as a medical educator cannot suffice to demonstrate his eligibility for a national interest waiver. These assertions are entirely speculative and therefore of little evidentiary value. Potential future accomplishments as a medical educator do not establish that the beneficiary has already significantly influenced his field of endeavor.

In denying the petition, the director found that the evidence failed to establish that the beneficiary "has accomplished anything more significant than other capable members of his profession holding similar credentials and conducting similar work. The record does not persuasively establish that his attributes are of such unique significance that the labor certification requirement can be waived."

On appeal, the petitioner submits copies of the beneficiary's educational credentials, and asserts that the beneficiary has been accepted as a member of a direct sales company's "speaker's bureau" which has a national platform. The petitioner then asserts that the beneficiary cannot participate in such work without legal status. The beneficiary's legal status is not relevant to the determination of whether the beneficiary qualifies for a national interest waiver. The petitioner also argues that very few physicians are knowledgeable about glycobiology and that the beneficiary is uniquely qualified to have a national impact through public education. The petitioner's argument that there is a shortage of medical professionals knowledgeable about glycobiology is not persuasive, given that the labor certification process was designed to address the issue of worker shortages.

It is not sufficient to state that the alien possesses unique credentials or an impressive background. 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. 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.

An alien must establish eligibility as of the time of filing the petition. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The petition in this case was filed on May 21, 2001. The petitioner has offered no evidence to demonstrate that the beneficiary had any significant influence on the field by the filing date of the petition. The only direct evidence indicating that the beneficiary has specialized knowledge in glycobiology consists of a course which he completed almost a year after the filing date of the petition. His acceptance as a member of a private company's speaker's bureau also occurred over a year after the petition's filing date.

The evidence in this case falls well short of distinguishing the beneficiary from others in his field. The assertion that the beneficiary is capable of future success as a medical educator does not persuasively distinguish him from other competent medical educational professionals. The petitioner offers no specific first-hand evidence that the beneficiary's past contributions as a medical educational professional or consultant have been substantially greater than the contributions made by others in that field or have already influenced his field to any significant degree. Without such evidence, we cannot conclude that the beneficiary is eligible for a national interest waiver.

As is clear from the plain wording 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 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.