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Immigration and Naturalization Service

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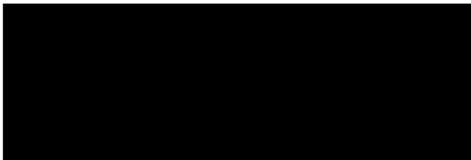


File: EAC 01 010 50438 Office: VERMONT SERVICE CENTER Date: FEB - 4 2003

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:



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 denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained and the petition will be approved.

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 is the Boston, Massachusetts affiliate of Initiative for a Competitive Inner City ("ICIC"), described as a "non-profit organization committed to improving living and economic conditions in inner cities." It seeks to employ the beneficiary as its managing director. 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 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 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 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 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 Service 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.

Marcia I. Lamb, chief operating officer of ICIC, describes the petitioner and the beneficiary's role therein:

ICIC currently has offices or affiliates in four cities in the United States, including Boston, Oakland, Kansas City and Baltimore, with plans to expand to other locations as well. ICIC and its affiliates currently employ approximately 35 employees throughout the United States (with a much larger contingent of volunteers) and has annual revenues of approximately \$2,000,000. . . .

[The petitioner], ICIC's affiliate in Boston, was established to take ICIC's research and programs to create an operating framework that has helped to create job opportunities accessible to Boston's inner city residents. [The petitioner] currently has five employees, a growing volunteer staff of approximately fifteen, 8-10 students from local colleges working on various projects, and an annual budget of approximately \$700,000. The Boston program, which has gathered support of national organizations such as the Fannie Mae Foundation and international private companies such as PricewaterhouseCoopers, has already delivered more than \$3,000,000 in pro bono resources to inner city clients. [The petitioner] has disseminated practical strategies for inner city business

development and worked directly with inner city clients to create more than 600 jobs for inner city residents. . . .

[As managing director of the petitioning entity], there are three primary roles for [the beneficiary]. The primary initial project for [the beneficiary] is our Fannie Mae Foundation project, which involves the development and application of a methodology to analyze neighborhood economies and how they can be developed. . . . [The beneficiary] will be our national project manager, responsible for both the development of the analytical model and its implementation in actual urban environments. Initially, we have targeted Oakland, Kansas City, Minneapolis, Boston, and Baltimore as the cities in which the program will initially be applied, but we anticipate that it will thereafter be expanded for application in other cities throughout the United States.

Second, [the beneficiary] will be responsible for the management and administration of several other projects . . . [that bring] together business, government and community leaders with the goal of providing a strategic agenda for private investments in Boston's inner city neighborhoods.

Finally, [the beneficiary] will have a key role in organizational management and fund raising, which are critical to ICIC's national success.

The intrinsic merit of economic revitalization is apparent. Because ICIC intends to utilize the petitioner on national projects, the petitioner has established the national scope of the beneficiary's work. The remaining prong of the national interest test concerns the extent to which the beneficiary's efforts have served, and will continue to serve, the national interest to an especially significant extent.

Along with materials describing the petitioner (and indicating that it "concentrates its work in Boston's inner city neighborhoods"), and documentation pertaining to the beneficiary's education and employment experience, the petitioner submits several witness letters. Gloria C. Larson states:

I am the former Secretary of Economic Affairs for the Commonwealth of Massachusetts. I am also currently a Board Member of several organizations focused on economic development, including MassINC, the New England Council, Jobs For Massachusetts, and the Greater Boston Chamber of Commerce. In addition, I am Chairman of the Board of Directors of the Massachusetts Convention Center Authority, responsible for building a new \$750,000,000 convention center in Boston. . . .

As a result of my work . . . I am well aware of [the beneficiary's] excellent track record as Director of Economic Development at Urban Edge Housing Corporation, a public-interest housing development initiative in Boston. At

Urban Edge Housing, [the beneficiary] was responsible for coordinating the Community Development Corporation tax credit program involving eight other CDCs. Under [the beneficiary's] direction, the program raised \$2,000,000 to be invested in ventures that provide employment and entrepreneurial opportunities for inner city residents. In addition, [the beneficiary] was also responsible for the design and coordination of "Open for Business," a program providing educational and technical opportunities for Latino merchants, and coordination of a series of internships at Urban Edge involving students from Harvard Business School and M.I.T.

In addition, I more recently had the opportunity to work directly with [the beneficiary] in his role as Vice President and Managing Director of [the petitioning entity]. . . .

I believe that [the beneficiary] has a unique ability to make a significant contribution to addressing the problems of America's inner cities by enlisting the private sector to help to revitalize the economic base in economically distressed neighborhoods.

Harvard Business School Professor [REDACTED] founder, chairman and CEO of ICIC, states "the Initiative is a respected national organization that has had a significant impact on urban economic development policy across the nation," an assertion supported by press clippings in the record. Prof. Porter explains why he "selected [the beneficiary] to be the Director of our Boston affiliate":

[The beneficiary's] work overseas has specific application in the U.S. where market-based solutions to urban poverty must respond to the interests and expectations of culturally diverse inner-city populations as well as integrate the role of government and the private sector. During his assignments overseas, [the beneficiary] was responsible for the design of innovative programs that brought international investors and agencies together with government and local entrepreneurs to revitalize local economies. . . .

Under [the beneficiary's] leadership, [the petitioner] has produced new, original frameworks for the development and support of economically competitive businesses in inner city neighborhoods. The Boston program has garnered the support of national organizations . . . [and] has disseminated practical strategies for inner-city business development and worked directly with inner-city clients to create more than 600 jobs for inner city residents.

Other officials of ICIC, the petitioning affiliate, and other local business and government bodies attest to the beneficiary's skills and achievements in the context of local business development in the Boston area.

The director requested further evidence that the petitioner has met the guidelines published in *Matter of New York State Dept. of Transportation*. Specifically, the director requested evidence to establish that the beneficiary's work has had, and will continue to have, a significant effect outside of the Boston area. In response, the petitioner has submitted another letter from Marcia Lamb as well as supporting documentation. Ms. Lamb observes that the petitioner's parent organization has offices in many parts of the United States, and that its programs have as their ultimate goal economic improvement at a national level. Ms. Lamb elaborates on the national reach of the beneficiary's work, offering several examples, including the following:

First, as Managing Director [of the petitioning entity, the beneficiary] also functions as Senior Vice President of ICIC National. In this key role, [the beneficiary] plays a critical part in shaping the strategic direction and national programs of ICIC. . . .

Second, the primary function of [the petitioner] within the ICIC organization is to "operationalize" ICIC's research and theory in a real world environment. . . . On the basis of the results of these on the ground test cases, [the petitioner] and ICIC then develop methodologies, models, and case studies that permit these programs to be implemented nationally through ICIC National and its partners.

A prime example of this use of the local environment as a "laboratory" for the development of a national program is the Neighborhood Business Development Methodology . . . [which] represents a critical step in enabling us to identify those initiatives which will have the most cost effective positive impact on economic conditions in inner cities. . . .

[The beneficiary] is serving as the **national** project manager for this project, responsible for both the development of the analytical model and its implementation in actual urban environments. Initially, we have targeted Boston, Oakland, and Kansas City as the test cities in which the program will be applied. . . . After a successful working model is developed, the program will be expanded for application in other cities throughout the United States. . . .

Under [the beneficiary's] direction, [the petitioner] has developed a methodology, being implemented nationally, to involve field study teams for urban universities in inner city work. . . . For the second consecutive year, this program has won the National Business School Network's national field study competition. . . .

In sum, the work that [the beneficiary] is doing at [the petitioning organization] . . . accomplishes this national impact through both (1) direct work on projects involving cities around the country and (2) development of working economic development methodologies that can then be successfully implemented on a nationwide basis. . . .

[The beneficiary] is virtually unique in his ability to make these inner city economic development programs work on a national level. . . . Most important, [the beneficiary] has an unparalleled track record of **successfully developing and implementing programmatic solutions which can be applied on a broad scale.**

Ms. Lamb notes that the beneficiary's "four predecessors as Managing Director were **not** successful in developing working economic methodologies that could be applied in other urban environments."

The director denied the petition, acknowledging the intrinsic merit of the beneficiary's work but finding that it was not national in scope and that the petitioner's own contribution does not warrant a waiver of the job offer requirement that, by law, attaches to the classification that the petitioner chose to seek. Responding to assertions that the beneficiary is important to the petitioner's growth and continued success, the director stated "[n]othing in the legislative history suggests that the national interest waiver was intended for businesses to profit and experience a measure of success and to continue this self serving benefit through employing individuals such as the beneficiary." While the director is correct in the general assertion that an alien does not serve the national interest simply by ensuring the profitability of one company, that argument does not apply here because the petitioner is a non-profit organization. Its goal is not to outperform its rivals and reap profits, but rather to contribute to the growth of many businesses in impoverished inner-city areas.

More substantive is the director's finding that "[t]he record does not demonstrate that the beneficiary's work . . . has been widely implemented," as opposed to speculation that the beneficiary's findings could be implemented at some undefined future time.

On appeal, the petitioner submits new exhibits and a brief from counsel. Counsel argues that the director erred in denying that the beneficiary's work is national in scope. Much of counsel's language in this regard appears to derive directly from Marcia Lamb's earlier letter submitted in response to the director's request for further evidence. For reasons enumerated above, we concur that while many of the beneficiary's activities are largely local, his work is not inherently limited to the Boston area but is, rather, national in scope.

To further establish the degree to which the beneficiary's work has already had an impact around the country, the petitioner submits further letters. [REDACTED] president of the board of directors of Oakland Advisors (like the petitioner, an ICIC affiliate), refers to the "on-going national implementation of the Neighborhood Business Development Methodology," discussed above. [REDACTED] asserts that the beneficiary "has been responsible for the development of groundbreaking methodologies that have supported successful efforts in Oakland and in other urban areas nationwide." Richard H. Zimmer, managing director of ICIC-Kansas City, also endorses the national implementation of programs initiated by the beneficiary.

[REDACTED] mayor of Boston, affirms that the beneficiary is directing the national implementation of the Neighborhood Business Development Methodology. Mayor Menino adds:

In addition, at my direction, [the beneficiary], working in partnership with the Boston Consulting Group and the Boston Redevelopment Authority, directed a project to perform in-depth research and analysis of the manufacturing and commercial service sectors in Boston. On the basis of this research, [the petitioner] helped design the Back Streets Program to increase the retention, attraction, and growth of manufacturing and commercial services companies in Boston's inner city. Beginning next year, I will bring this program to light as a national model for other cities in my role as President of the U.S. Conference of Mayors.

██████████ echoes previous references to the beneficiary's "unparalleled track record." Magazine articles submitted with the appeal indicate that Boston has had unusual success in terms of encouraging the growth of inner-city businesses, and there is substantial weight in the assertion of Boston's mayor that the beneficiary deserves much of the credit. On balance, the evidence addresses and overcomes the director's finding that the beneficiary's efforts are of benefit only to his employer and to the Boston area.

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 occupation, rather than on the merits of the individual alien. That being said, the above evidence, and further evidence in the record, establishes that the beneficiary has had, and continues to have, a particularly significant impact, not only designing local programs, but implementing them at a national level. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has 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 sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.