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U.S. Department of Justice

Immigration and Naturalization Service

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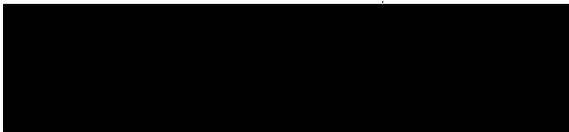
Date: FEB - 4 2003

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)

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, California Service Center, and the Associate Commissioner for Examinations dismissed a subsequent appeal. The Associate Commissioner reopened the proceeding on the petitioner's motion and affirmed the denial of the petition. The matter is now before the Associate Commissioner on a second motion to reopen. The motion will be granted. The decision of the Associate Commissioner will be withdrawn, and the petition will be approved.

The petitioner seeks classification 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 employment as a Senior Computer Analyst at Tripler Army Medical Center ("Tripler AMC") in Hawaii. 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 petitioner had not shown that he qualifies for classification as a member of the professions holding an advanced degree, and 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. The Administrative Appeals Office ("AAO"), acting on behalf of the Associate Commissioner, affirmed the director's decision and dismissed the appeal, affirming that decision subsequent to the petitioner's first motion.

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.

On motion, counsel states "[t]he AAO did not consider the supplemental brief and supporting documentation (filed by the petitioner's new counsel on July 3, 2001, and received by the AAO on July 9, 2001) in its decision dated July 11, 2001." The date on the cover page of the decision refers to the date that the decision was placed in the mail. AAO records reflect that the writing of the decision was actually completed on June 21, 2001, before the supplemental brief was submitted.

Even if the new brief had been in hand during the writing of the decision, the AAO would have been under no obligation to consider it. The petitioner's July 2001 submission was intended to supplement an appeal that had been filed nearly three and a half years earlier, in January 1998. The regulation at 8 C.F.R. 103.3(a)(2)(vii) allows for limited circumstances in which a petitioner can supplement an already-submitted appeal. This regulation, however, applies only to appeals, and not to motions to reopen or reconsider.<sup>1</sup> There is no analogous regulation that allows a petitioner to submit new evidence in furtherance of a previously filed motion. By filing a motion, the petitioner does not secure an open-ended period in which to supplement the record. The July 2001 submission will be considered in the context of the latest motion, but the AAO did not err in failing to consider this submission in its last decision.

The first issue in contention is whether the petitioner qualifies as a member of the professions holding an advanced degree. In its previous decisions, the AAO has held that the petitioner does not qualify for this classification because the petitioner's advanced degree in Agricultural and Resource Economics has no direct relation to the petitioner's work at Tripler AMC, which the AAO described as "collating paper records into an electronic database." The AAO held that, because classification as a member of the professions holding an advanced degree is an employment-based classification, it is reasonable to require the advanced degree to be relevant to the employment. The regulation at 8 C.F.R. 204.5(k)(2) indicates that five years of progressive post-baccalaureate experience in the specialty constitutes the equivalent of a master's degree. The AAO determined that the petitioner had not shown five years of progressive post-baccalaureate experience in the specialty. While the petitioner had claimed such experience on his resume, the record at the time contained no evidence to confirm the employment claimed on the resume.

Counsel's July 2001 brief, resubmitted in the latest motion, contains a discussion of the petitioner's eligibility for classification as a member of the professions holding an advanced degree. Counsel mentions the petitioner's master's degree, but does not address or, apparently, contest the AAO's finding that the petitioner's master's degree in Agricultural and Resource Science is irrelevant to the petitioner's work designing computer systems for a military hospital. Counsel concentrates on the claim that the petitioner has over five years of qualifying post-baccalaureate experience. Counsel lists the following experience:

January 1987 to December 1988. 2 years full-time employment with Charles River Computers, Ltd. as a data base specialist. . . .

April 1, 1989 to February 4, 1991. 1 year and 10 months full-time employment with the Hong Kong Observatory as an "Experimental Officer" (official job title) software specialist working on software programming/data base development projects and data analysis.

January 1991 to June 1995. 4 years and 5 months of half-time (20 hours a week, which is equivalent to 2 years and 2-1/2 months full-time) employment with the East-West Center . . . and the University of Hawaii as a project assistant,

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<sup>1</sup> Even then, the petitioner must indicate in advance that the supplement is forthcoming, and explain why additional time is needed. In this case, in January 1998 the petitioner did not indicate that, or explain why, he would require three and a half years to submit further materials.

performing economic research and data analysis using computer programming and database modeling techniques.

June 1995 to May 1996. 1 year of full-time employment at Tripler Army Medical Center as a software developer.

(Total: About 7 years of progressive working experience in the computer science field.)

Regarding the petitioner's work at the Hong Kong Observatory, counsel states that the petitioner "did not work as a weather forecaster because he had no training in meteorology." On his resume, however, the petitioner listed his job title at the observatory as "Assistant Weather Forecaster." A newly submitted letter from the assistant director of the observatory, Dr. M.C. Wong, indicates that the petitioner "worked as an Assistant Forecaster responsible for preparation of weather charts, analysis of observation data and weather systems." Dr. Wong does not state that the petitioner's lack of training in meteorology prevented him from working as a weather forecaster. Rather, Dr. Wong states that the petitioner "was first posted to the Radiation Monitoring Division (RMD) and then the Central Forecasting Office (CFO) working on software programming/database development projects and data analysis/weather forecasting respectively."

This letter not only fails to support counsel's claim, it contradicts it outright, indicating that the petitioner was removed from "software programming/database development projects" at the RMD in order to perform "data analysis/weather forecasting" at the CFO. Dr. Wong does not specify when the petitioner moved from the RMD to the CFO, but it is clear that the petitioner's one year and ten months at the observatory did not consist entirely of database design.

Even discounting the petitioner's work at the observatory, the petitioner's post-baccalaureate experience appears to be sufficient to equate to a master's degree. Previous Service findings to the contrary were not in error, because at the time those decisions were rendered, the petitioner had not met his burden of proof with regard to evidence of prior employment.

The remaining issue is whether the petitioner merits a national interest waiver of the job offer requirement. 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.

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.

On motion, counsel notes that *Matter of New York State Dept. of Transportation*, 22 I&N Dec. 215 (Comm. 1998) was issued in 1998, after the 1996 filing of this petition, and therefore the Service should have afforded the petitioner "an opportunity to meet the higher standard, such as responding to a Service's request for additional evidence." The director initially denied the petition in 1996, and the AAO dismissed the appeal in 1997, both before the 1998 publication of the precedent decision. The only post-1998 decision is the AAO's first decision on motion, from 2001. The AAO did not cite *Matter of New York State Dept. of Transportation* in that decision. Thus, the record refutes counsel's assertion that the 1998 publication of *Matter of New York State Dept. of Transportation* prejudiced the outcome of the petition.

More persuasive in this matter are newly submitted materials from Tripler AMC officials and others who describe the petitioner's women's health care database system in a degree of detail previously unavailable in the record, and provide evidence of the growing implementation and usage of the system. Because the prototype of the system was already in place before the 1996 filing of the petition, subsequent developments can be considered as a continuation of existing trends rather than entirely new evidence. The new submissions also indicate that the petitioner's continued involvement is "pivotal" to a system that coordinates much of the health care for military personnel throughout the Pacific region.

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 field of endeavor, rather than on the merits of the individual alien. That being said, the record establishes the significance of this petitioner's work rather than simply the occupation in general. 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 previous decision of the Associate Commissioner will be withdrawn, and the petition will be approved.

**ORDER:** The Associate Commissioner's decision of July 11, 2001 is withdrawn, and the petition is approved.