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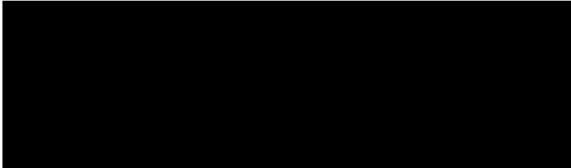
U.S. Department of Justice

Immigration and Naturalization Service

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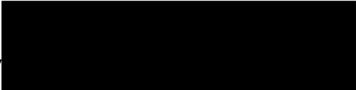
OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: WAC 00 035 53149 Office: California Service Center

Date: **FEB 27 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:



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, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The record reflects that the alien filed the I-140 petition with the California Service Center on November 19, 1999, listing himself as the petitioner under Part 1 of the form. Furthermore, the alien signed the petition under Part 8 of the form. The Service regulation at 8 C.F.R. § 103.2(a)(2) states: "An applicant or petitioner must sign his or her application or petition." Therefore, the alien shall be considered to be the petitioner.

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 an alien of exceptional ability in business and as a member of the professions holding an advanced degree. The petitioner seeks employment as the president of EP International Corporation, an exporting business established by the petitioner. 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 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 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.

(ii) Physicians working in shortage areas or veterans facilities.

The petitioner holds a Master of Business Administration degree from California State University, Dominguez Hills. The first issue to be determined is whether the petitioner is a member of the professions holding an advanced degree, and/or an alien of exceptional ability. Counsel asserts that the petitioner qualifies for both underlying classifications. A review of the record, however, does

not support counsel's assertion.

Section 101(a)(32) of the Act provides:

The term "profession" shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.

The regulation at 8 C.F.R. § 204.5(k)(2) states, in pertinent part:

Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as an occupation for which a United States Baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.

Holding office as a the president of a corporation does not meet the regulatory definition of a profession at 8 C.F.R. § 204.5(k)(2) because the occupation is not listed in section 101(a)(32) of the Act, and a bachelor's degree is not required for entry into the occupation. See the Department of Labor's Occupational Outlook Handbook, 1998-1999 edition, page 48 ("General Managers and Top Executives"). That the petitioner holds a master's degree in business administration has absolutely no bearing on whether being the top executive of a corporation requires at least a bachelor's degree. While the petitioner's degree may relate to his work, there is no evidence that there is any mechanism in place that would prevent an individual with no bachelor's degree from becoming the president of a corporation. Therefore, as the president of a corporation, the petitioner does not qualify as an advanced-degree professional.

The petitioner also claims eligibility as an alien of exceptional ability. The regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth six criteria, at least three of which an alien must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business. A discussion of these criteria follows below.

The Service regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered." Therefore, evidence submitted to establish exceptional ability must somehow place the alien above others in the field in order to fulfill the criteria; qualifications possessed by every member of a given field cannot demonstrate "a degree of expertise significantly above that ordinarily encountered." For example, every physician has a college degree and a license or certification, but it defies logic to claim that every physician is "exceptional."

An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability.

The petitioner holds a Master of Business Administration degree from California State University, Dominguez Hills, thus satisfying this criterion.

Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought.

In an affidavit accompanying the petition, the petitioner stated: "I established an exporting business, EP International Corporation, ... on August 1, 1989. I own 100 percent of the company shares and I have been operating EP International Corporation as president." The petitioner further stated that he filed "Joint Reports of Federal Income Taxes, Franchise Taxes and Business Taxes with the IRS and FTB every year from 1987 through 1998."

The petitioner submitted business records confirming some of his activities with EP International Corporation subsequent to 1990, but provided no evidence of any employment activities for the company prior to that date. For example, the petitioner provided a lease for office space at 750 East Green Street commencing on April 10, 1990 and a business license from the City of Pasadena reflecting a date of August 31, 1990, but he offered no evidence of any business activity or tax records prior to 1990. In order to demonstrate eligibility under this criterion, the petitioner must show that he was employed full-time as a company president for a period of at least ten years as of the filing date of the petition on November 19, 1999.

We cannot ignore the presence in the record of a "Seller's Permit" dated June 13, 1994 and issued by the State of California. The permit lists the petitioner as owner of "Cochi Vechi Fast Food" and authorizes him to engage in business at 17915 MacArthur Boulevard, Irvine, California. The existence of this document raises questions as to whether the petitioner served "full-time" as the president of EP International throughout the 1990's.

The Service regulation at 8 C.F.R. § 103.2(b)(2) states:

Submitting secondary evidence and affidavits. (i) General. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

An affidavit from the petitioner without sufficient corroborating documentation carries insufficient evidentiary weight to satisfy this criterion. The petitioner has not shown that he worked full-time as a company president for at least ten years.

A license to practice the profession or certification for a particular profession or occupation.

Business licenses, requiring only payment of a fee or local taxes, would not satisfy this criterion. For example, the petitioner's business license from the City of Pasadena states: "The person, firm or corporation named below is hereby granted this certificate as the receipt for taxes paid... The City of Pasadena does not pass on the qualifications of the holder of this certificate." In order to satisfy this criterion, the petitioner must show that the license or certification was awarded for expertise significantly above that ordinarily encountered in the petitioner's occupation.

Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability.

The petitioner submitted his U.S. tax return for 1998 reflecting a business income of \$56,097. The record does not fully document the petitioner's prior remuneration, or compare his remuneration to that of other company presidents whose corporations are engaged in international business. The purpose of this criterion is to demonstrate that the petitioner's exceptional ability has earned him compensation that exceeds that of others in comparable positions. Because the petitioner has indicated that he works in the export industry, other comparable executives in that industry would form the baseline against which the petitioner's salary must be measured.

Evidence of membership in professional associations.

The Service regulation at 8 C.F.R. § 204.5(k)(3)(iii) allows the submission of comparable evidence when the regulatory criteria do not readily apply to the alien's occupation. Thus, while the petitioner has not established that he is a "professional" as the regulations define that term, evidence of the petitioner's membership in non-professional trade associations could be considered as comparable evidence. The petitioner submitted evidence showing that his company, EP International, is a member of the U.S.A. Dry Pea and Lentil Council and California Bean Shippers Association. Participation in these organizations, however, appears open to all agricultural exporters seeking membership. The petitioner has offered no evidence showing that he serves at the regional or national level as an officer of these associations or that they require exceptional ability of their individual members.

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

The petitioner submitted letters from several local and regional agricultural growers and processors that utilize EP International Corporation's export services. Five of the letters, all dated within two months of the petition's filing date, were addressed to the Agricultural Export Services Division at the U.S. Department of Agriculture. The growers' letters credit the petitioner's company with successfully marketing their products overseas and recommend EP International for a Madigan Award. The record, however, contains no evidence that the petitioner or his company actually

received the Madigan Award or any other type of formal recognition as described in the regulation. Independent evidence that would have existed whether or not this petition was filed would be more persuasive than the subjective statements of individuals selected by the petitioner. It should be noted that the Service is not questioning the credibility of the petitioner's witnesses, but looking for evidence that the petitioner's efforts have impacted the industry beyond his own company and its direct clients.

Letters from other growers and distributors merely confirm that they have a business relationship with EP International. Simply providing effective exporting services is insufficient to demonstrate "achievements and significant contributions" in the agricultural export industry. While the petitioner has submitted proof of his company's business transactions (for example, gross sales on its tax return totaling \$842,279 in 1998), simply running a viable export business does not necessarily set the petitioner apart from other company presidents. The petitioner's witnesses have not explained how contributing to the success of one's own company and its agricultural suppliers constitutes a significant contribution to the field or industry, beyond what would normally be expected of any high-level executive in a company providing exporting services.

On appeal, the petitioner submits four new letters from his company's agricultural suppliers addressed to the U.S. Department of Commerce recommending EP International Corporation for a "President's 'E' Award for Exports" and an additional letter addressed to the U.S. Department of Agriculture again recommending the petitioner for a Madigan Award. All of these letters came into existence in 2001. We note here that as of the filing date of the petition, November 19, 1999, the record contained no evidence of the petitioner's receipt of either of the above awards. A petitioner must establish eligibility at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

We will further discuss the witness letters when we address the national interest issue, below.

For the reasons explained above, the available evidence is sufficient to satisfy only one of the regulatory criteria regarding exceptional ability. The record portrays the petitioner as running a successful export business, but the record does not establish that the petitioner exhibits a degree of expertise significantly above that normally encountered in his occupation.

Thus, the record contains no persuasive argument or evidence that the petitioner is a member of the professions, as the pertinent regulations define that term, or that the petitioner qualifies as an alien of exceptional ability. The director's decision, however, did not address the petitioner's eligibility for either underlying classification. The issue of whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest is moot, because the petitioner is ineligible under the classification sought. The issue will be discussed because it was central to the director's decision.

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.

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 this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification sought. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at note 6.

The petitioner describes how his company will serve the national interest:

EP International Co. [was] established in 1989 to export construction materials to overseas contractors in Saipan, Guam, Japan, and Korea. Mechanical, electrical, civil, plumbing materials have been exported for many years. In early 1990's, the construction boom was gone. At that time, we began to export U.S. agricultural products with the help of Agexport programs provided by U.S. Department of Agriculture. We utilized every program they

created for exporters like us. As a result of unceasing efforts, our export amount increased by leaps and bounds every year.

Now our company has grown to be qualified for awards called [the] Madigan Award given by the Department of Agriculture and “The President’s ‘E’ certificate for Exports” given by U.S. Department of Commerce. That’s why we are applying for those two awards. We developed new markets, new varieties, and expanded markets to a considerable extent as shown in the recommendation letters that we received from our suppliers, farmers, and processors. This result helped them to plant new varieties, increase acreage, earn more income and hire more people on their farms. According to the U.S. Department of commerce, an average of 12,000 jobs are supported by every \$1 billion in exports. California export sales contribute to increasing high wage jobs and investment. They also reduce the trade deficit and spur growth for small to medium size companies. Our suppliers think our marketing efforts are indispensable to their farming in the future. That is the reason why they appointed us as their exclusive sales representative in overseas markets.

We can dare say that our company’s sales efforts will be conducive to national interests. Nobody can have any doubt at all about our continuous contributions to the development of the United States of America.

General statements regarding the overall economic benefit of agricultural exports cannot suffice to establish eligibility for the national interest waiver under *Matter of New York Dept. of Transportation*. Eligibility for the national interest waiver must rest with the petitioner’s own qualifications rather than the general economic benefits associated with his occupation. In other words, we generally do not accept the argument that a given occupation is so important that any alien qualified to perform the occupation must also qualify for a 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. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d 1289, 1295 (5th Cir. 1987). Congress plainly intends the national interest waiver to be the exception rather than the rule.

In a statement accompanying the petition, counsel claimed that the petitioner is eligible for a national interest waiver based on the petitioner’s “fifteen years of higher educational learning” and “ten years practical business experience.” We note here that any objective qualifications necessary for the petitioner’s employment as a company president can be articulated in an application for alien labor certification. Pursuant to *Matter of New York State Dept. of Transportation*, an alien cannot demonstrate eligibility for the national interest waiver simply by establishing a certain level of training or education that could be articulated on an application for a labor certification. In order to establish eligibility under this classification, the petitioner must demonstrate a past history of significant accomplishment having some degree of measurable impact on the U.S. export industry. Stated another way, the petitioner must show that his individual contributions measurably exceed those of other company presidents working in the

same industry.

Counsel further stated: “[The petitioner] has made significant contributions to exporting U.S. agricultural products to more than thirteen countries in Asia and South America from January 1990 to the present. He contributed to developing the world markets...” Letters from the petitioner’s agricultural suppliers assert that the petitioner has allowed their companies to establish a greater presence in Asian markets, but the letters generally do not indicate what level of benefit can be ascribed specifically to the petitioner as opposed to overall global economic trends. Furthermore, the petitioner offered no independent financial statistics from the business media or authorities such as the U.S. Department of Commerce or U.S. Department of Agriculture to show that his company enjoys a greater market share or has been significantly more successful than other export businesses in penetrating foreign markets. Nor has the petitioner shown that his company provides a service of intrinsically greater significance than that of other U.S. exporters.

We acknowledge the petitioner’s submission of a U.S. tax return from 1998, showing gross sales of \$842,279, and a Business Information Report issued by Dun & Bradstreet, Inc., showing sales of \$1,201,527 (year unknown), but this information does not prove that the petitioner has significantly influenced “developing world markets” for agricultural products. The petitioner engages in what is, inherently, an international enterprise involving yearly sales of a few million dollars. The petitioner, like any other business executive, plays a significant role in directing the activities of his company. The statute, however, does not automatically qualify top executives for the national interest waiver, and the petitioner does not establish the relative importance of his activities simply by describing them.

The petitioner submitted brief letters from several agricultural growers and distributors, mostly from California and the western U.S., which utilize EP International’s export services. We cite some representative examples here.

██████████ Chairman, Morehouse Foods (California), a processor of prepared mustard and prepared horseradish, states: “EP International plays an important role in our international sales in Asia... Their determined efforts to sell U.S. products internationally have resulted in an ever expanding market for our products.”

██████████ KBC Trading and Processing Company (California), states: “EP International Corporation has been a shipper of our products into the Korean and Hong Kong markets... This year our sales volume to EP International for exports is expected to reach 1,500 metric tons, a large part being Split Beans, which is a limited and competitive market in the Far East.”

██████████ San Benito Foods (California), states: “With [the petitioner’s] continuing efforts, our reputation has been greatly enhanced in Korea.”

In this case, the nature of the petitioner’s job is to ensure that his suppliers’ products are sold overseas; simply being a competent agricultural exporter cannot suffice to demonstrate eligibility

for a national interest waiver. We do not dispute the fact that the petitioner's company has provided economic benefits to his western U.S. suppliers, but the petitioner's ability to impact the industry beyond the companies that EP International directly serves has not been demonstrated. The performance of exporting services for a given agricultural supplier is of interest mainly to that particular supplier. We cannot ignore that virtually all of the petitioner's suppliers are from California or the western U.S. The scope of the petitioner's business, therefore, appears to be regional, rather than national.

Counsel asserted that the petitioner's presence would benefit the national economy by increasing the demand for production of agricultural products from U.S. farmers and food manufacturers and raising the wages of their workers. This argument fails to take into account the scale of the petitioner's contribution. For example, a company that exports \$100 worth of goods is, in a small way, contributing to the economy and improving the balance of trade, but the effect of this \$100 is negligible on a national scale. The petitioner offered no evidence from business publications or governmental agencies showing that U.S. foreign trade has shifted discernibly as a result of the petitioner's individual efforts, and therefore counsel's argument regarding the petitioner's impact on the national economy is weak. While the beneficiary's involvement in increasing U.S. exports has arguably been of some economic benefit to the U.S., promoting such exports is a routine duty for the president of corporation conducting international business.

The petitioner's documentation included what appears to be an article from an internal newsletter of the USDA's Foreign Agricultural Service. The article, entitled "FAS Weekly Key Developments, Week Ending February 26, 1999," states:

A California exporter has credited FAS with providing key assistance in making his first agricultural sales to South Korea and Hong Kong. [The petitioner], CEO of EP International Corporation, said that the combination of contacts, introduction to importers, and market information provided by Agricultural Export Services and ATO ["Agricultural Trade Office"] Seoul and ATO Hong Kong (via Trade Leads, Buyer Alert Market Briefs, Buying Missions, etc.) greatly facilitated his company's shift from construction materials to food and agricultural exports during Asia's severe economic crisis. In 1996, EP International began looking for alternative export products and began changing their focus to food and agricultural products. Working with both ATOs and [the] Agricultural Services Export Division to identify buyers and U.S. suppliers of dry beans, peas, lentils, and other food products, EP began building their export sales. By 1998, the company had monthly sales of more than 25 containers to South Korea and Hong Kong and were able to build these sales despite increasing economic uncertainty in Asia.

This article establishes only that the petitioner's company is relatively new to the agricultural export business and that his company relied heavily on services provided by the U.S. Department of Agriculture. It certainly does not demonstrate that the petitioner, or his company, has had a past track record of recognizable, proven leadership in the agricultural export business.

The director denied the petition, stating that the petitioner failed to establish that a waiver of the

requirement of an approved labor certification would be in the national interest of the United States. The director indicated that the benefits of the petitioner's work were regional, rather than national, in scope. The director also noted a lack of evidence from national business associations or U.S. Government agencies confirming the petitioner's individual importance to the national interest.

On appeal, counsel argues that the petitioner has "greatly contributed to the U.S. farmers and agricultural products processors [that] export products to Asian countries." The petitioner's ability to benefit EP International's agricultural product suppliers is not in dispute. The issue here is whether the petitioner serves the national interest to greater degree than other corporate executives engaged in international business. General statements about the economic benefit of U.S. exports would apply to all corporate executives working for U.S. companies engaged in foreign trade and do not distinguish the petitioner for the special benefit of a national interest waiver. By law, advance degree professionals and aliens of exceptional ability are generally required to have a job offer and a labor certification.

The petitioner provides additional letters from his growers and distributors on appeal. As discussed previously, several of these letters are addressed to the Department of Commerce or the Department of Agriculture and recommend the petitioner for a "President's 'E' Award for Exports" or a Madigan Award, but no evidence of the petitioner's actual receipt of either of these awards was submitted. Vague, anecdotal comments from a handful of small companies in the agricultural industry (mostly from California) do not establish that the petitioner's impact on the industry has been any greater than that of other successful exporters.

In responding to the director's notice of denial, the petitioner submitted a letter from Daryl Brehm, Director, Agricultural Trade Office, U.S. Embassy, Seoul Korea, USDA Foreign Agricultural Service. Daryl Brehm states:

Our office has had a long association with EP International Corporation over the years. [The petitioner] has sought and obtained assistance from our office on many occasions to obtain information on export possibilities of agricultural and food products to Korea. However, unlike many of the companies that contact us, [the petitioner] doggedly pursued the trade leads we gave him, gradually expanding the Korean export business of his company to build it to the thriving concern it is today.

EP International Corporation, and its president, [the petitioner], embody the type of small U.S. company which has increased exports to this part of the world over the past decade. It has taken hard work, patience, and persistence to penetrate the Korean market, and EP International has done all of that.

We accept that the petitioner has a successful export business and that he has successfully marketed U.S. agricultural products in Asian markets. The petitioner, however, has not shown that his work has attracted attention beyond those companies utilizing his export services or the governmental agencies that offered him direct assistance. While the U.S. does have an economic interest in

expanding agricultural exports to Asian Pacific Rim nations, the petitioner has not shown that this market was largely impenetrable to U.S. exporters as a whole (rather than just some of the petitioner's immediate suppliers) prior to the petitioner's involvement.

Counsel also mentions the petitioner's local volunteer work and charitable donations. We note here that the petitioner in this case seeks an employment-based visa. The petitioner's activities that are held to be in the national interest must, therefore, derive from his employment. The national interest waiver is statutorily limited to advanced degree professionals and aliens of exceptional ability. Counsel does not explain why the volunteer work of advanced degree professionals or aliens of exceptional ability should be rewarded with an immigration benefit (i.e., the national interest waiver), when the comparable efforts of aliens who fall outside this visa classification cannot be so recognized. Volunteer work outside of one's job duties, while admirable, cannot fairly be considered when adjudicating an application for an employment based national interest waiver.

The petitioner in this case has not shown that his business accomplishments are of demonstrably greater value than the achievements of other company presidents whose corporations are also engaged in international trade. The available evidence does not persuasively demonstrate that the petitioner's past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. In any event, we cannot consider the petitioner for the national interest waiver, as he has not shown that he qualifies for the underlying classification.

The record indicates that the petitioner has established a growing export business. The record does not establish, however, that the petitioner's impact on the national interest exceeds that of other business executives of comparable rank. The petitioner's contributions have consistently been described in terms of his success in exporting the agricultural products of his growers and distributors. The petitioner clearly runs a successful export company, but his talent does not rise to a level of exceptional ability or meet the higher burden required 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 occupation, 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.

ORDER: The appeal is dismissed.