



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: [REDACTED] Office: NEBRASKA SERVICE CENTER

Date: FEB 27 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: 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, Nebraska Service Center, and is now before the Administrative Appeals Office. The appeal will be dismissed.

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 or an alien of exceptional ability. The petitioner seeks employment as a database administrator. 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. 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.

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

The director did not dispute that the petitioner qualifies for classification as a member of the professions holding an advanced degree or as an alien of exceptional ability, but 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. 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.

In this case, the director found that the petitioner had established that he would be employed in an area of substantial intrinsic merit, database administration. However, the director did not find that the petitioner had established that the benefit of his employment would be national in scope or that the petitioner had shown that he would serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. We concur with the director.

The petitioner asserts that his work with computers and databases is national in scope because he has provided consulting services to his employer's clients in the form of designing and implementing web-databases which transcend geographical boundaries by improving customer interaction in several states. The fact remains, however, that generally the design of a database system for a given client is of interest only to that particular client. There is little evidence in the record to indicate that the proposed benefit of this petitioner's employment as a database administrator goes beyond serving the immediate interest of a particular employer.

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 submitted several letters in support of his petition, many of which were submitted in support of a previous I-140 petition that was denied by the director April 4, 2000. Lawrence Lesperance, employed for eleven years as a technical resource manager for a "private organization in Milwaukee" providing technical consulting services and software products, wrote a letter on the

petitioner's behalf dated November 25, 1998. The petitioner also submits copies of his performance appraisals from April 1998 to April 2001 issued by Compuware, the petitioner's current employer. Mr. Lesperance signed these appraisals as a "manager." Mr. Lesperance states:

In my opinion Oracle RDBMS [relational database management system] is playing a vital role in the today's [sic] Information Technology and in turn, in global economics. With the present trend of globalization of information, business and commerce, I feel, Oracle RDBMS has a greater role in the days to come.

[The petitioner], is a Oracle Certified Professional—Oracle 7.3 Database administrator, and is working for Compuware Corporation, Milwaukee, as Senior Staff Analyst. His skill set includes the use of SQL, PL/SQL, Reports 2.5 and Forms 4.5. He is capable of performing as an Oracle Database Administrator and Application Developer. He has a working knowledge in Windows 95, Windows 3.11, Windows NT and UNIX operating systems.

....

[The petitioner] is an Oracle database expert possessing the skills required to design, develop and administer medium to large databases. He has wide range [sic] of other expertise including computer programming, engineering and computer simulations. [The petitioner] has skills that are required by many organizations in the USA. His skills make him highly productive with the databases and software applications he maintains or develops allowing for higher performance and less downtime.

Mr. Lesperance added that it is difficult to find qualified Oracle RDBMS administrators with the necessary ability to maintain an Oracle RDBMS. The petitioner's other evidence, including several internet articles discussing the high demand for qualified database administrators, corroborates Mr. Lesperance's assertion.

Pursuant to *Matter of New York State Dept. of Transportation*, a shortage of qualified workers in a given field, regardless of the nature of the occupation, does not constitute grounds for a national interest waiver. Given that the labor certification process was designed to address the issue of worker shortages, a shortage of qualified workers is an argument for obtaining, rather than waiving, a labor certification.

Similarly, eligibility for the national interest waiver must rest with the alien's qualifications rather than with the position sought. This applies whether the position is publicly or privately funded. It is generally not accepted that a given project, such as database administration, is of such importance that any alien qualified to work on it must also qualify for a national interest waiver. The 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 219, n.6.

[REDACTED] a vice-president of software development for NuEdge Systems, credits the petitioner with playing a key role in developing and implementing two Oracle8i databases and endorses the petitioner as a professional with exceptionally good knowledge of the relational database system.

[REDACTED] a project administrator for the Harley-Davidson Motor Company, describes the petitioner's work as a Compuware consultant working under her supervision from 1998 through June 2000. She praises the petitioner as having outstanding knowledge of relational database systems of Oracle, SQL server and Access '97.

These letters do not distinguish the petitioner from other capable and talented database administrators, or establish the need for waiving the requirement for a labor certification.

[REDACTED] a senior staff analyst at Compuware, explains that the Oracle database is the most prominent of relational databases. He confirms that the petitioner is an Oracle certified professional and that he has a "unique combination of skills and abilities that are required to develop, administer and maintain large Oracle databases." [REDACTED] praises the petitioner as being among the first 1500 people worldwide to obtain Oracle certification. The record contains several copies of the petitioner's certificates of Oracle training.

[REDACTED] statements regarding the petitioner's Oracle certification cannot suffice to demonstrate eligibility for the national interest waiver. Possession of such certifications does not intrinsically distinguish the petitioner from other U.S. workers who earned the same certification by meeting the same standards at the same time or at a subsequent date. The statute and regulations do not establish blanket waivers for certified computer professionals. Any objective qualifications that are necessary for the performance of a database administrator, such as selected expertise in particular relational databases, can be articulated in an application for an alien labor certification. It also cannot suffice to state that the petitioner possesses useful or unique skills. Regardless of the petitioner's particular experience or talents, even assuming that they are unique, the benefit that the petitioner's skills or background will provide to the U.S. must also considerably outweigh the inherent national interest in protecting U.S. workers through the labor certification process. 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.

Three of the petitioner's professors who had worked with him as a student or instructor describe his academic accomplishments. Professor K.N. Venkatakrishna Rao of the University B.D.T. College of Engineering, Kuvempu University, India states that the petitioner "was very interested in [c]omputer programming, though no computer-programming course was offered then. So, he started learning Fortran IV programming language under my guidance and then his 'Project Work' was to investigate solutions to some of the civil engineering problems."

Professor B.T. Patil of the Karnataka Regional Engineering College, Surathkal, Mangalore University, India met the petitioner as a student and later as a colleague. He states that the petitioner's "excellent knowledge of [e]ngineering [m]echanics, led him to join Dr. S.S. Bhavikatti, one of my colleagues, to write a textbook on [e]ngineering [m]echanics, which has been well received in the academic community." These witnesses do not address how the petitioner has influenced the computer field or how the petitioner's educational credentials in civil engineering distinguish him from other career computer database administrators.

[REDACTED] of the University of Hawaii's School of Ocean and Earth Science and Technology states that the petitioner "convert[ed] hard copies of old tsunami records (of Pacific Region) into digital-computer files" and "independently developed the related programs to fix the scale of the digital records." Professor Loomis does not explain the significance of the petitioner's work, only that he performed his duties "to my satisfaction" and that he was "technically skilled and conscientious."

[REDACTED] an associate justice of the Hawaii Supreme Court, submits a letter generally praising the petitioner's personal qualities of humility and diligence. While commendable, this has no immediate relevance to the approval of a national interest waiver.

The above letters are all from the petitioner's immediate circle of supervisors and colleagues. While such letters are important in providing descriptions about the petitioner's role in various engineering studies connected to his academic career, and provide general assertions of the petitioner's professional database administration competencies relating to his current employment, they do not demonstrate the petitioner's influence on the computer database administration field beyond the specific affiliated entities. They fail to show that his work has attracted any significant attention in the greater computer science/database administration community.

The petitioner submits a copy of an engineering related article in which he was the lead author, and copies of an engineering related article and title pages of an engineering textbook that he co-authored. The record, however, contains no evidence to demonstrate that independent researchers in the field of database administration view the petitioner's published findings as particularly significant. The petitioner has not provided a citation history of his published works. Without evidence reflecting independent citation of his articles, the petitioner has not significantly distinguished his research from that of others in the field.

The director denied the petition, concluding that the petitioner had not established that his contributions measurably exceeded those of his peers, thus he had not shown that a waiver of an approved labor certification would be in the national interest.

The petitioner argues that the labor certification process is not applicable to him because he is self-petitioning, because the process of locating an employer would be a distraction and decrease his productivity, and because the changing employment strategies of an employer would affect his ability to complete the labor certification process. None of these contentions sufficiently explains



why any of these scenarios would be against the national interest, as opposed to serving the convenience of the petitioner or an employer.

In this case, the petitioner's evidence establishes that he is a trained, competent computer professional, but does not persuasively distinguish the petitioner from other trained competent database administrators or delineate how the petitioner's accomplishments have significantly impacted his field of endeavor.

As is clear from the plain wording of the statute, it is 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 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. In this case, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.