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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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



File: WAC 01 211 56935 Office: California Service Center

Date: JUL 03 2003

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition: Immigration Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. §1153(b)(2)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

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 Bureau of Citizenship and Immigration Services (Bureau) 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 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 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 qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has 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. -- The Attorney General may, when he deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner, who holds a Master's degree and works in a field that meets the regulatory definition of a profession, claims eligibility as an alien of exceptional ability. Because he readily qualifies as an advanced-degree professional, however, an additional finding of exceptional ability would be of no further benefit to the petitioner. The director did not dispute that the petitioner 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.

The petitioner describes himself as a dual professional geophysicist in the field of energy risk analysis. Along with evidence of the petitioner's Master's degree, the petitioner submits his thesis and abstract, as well as certificates for completion of Derivatives Fundamentals, Canadian Securities, Options licensing, and Futures licensing at the Canadian Securities Institute. As indicated above, neither we, nor the director, dispute the fact that the petitioner is a member of the professions holding an advanced degree. What is at issue is whether the petitioner qualifies for a waiver of the labor certification. The submission of evidence of work completed by the petitioner in pursuit of his degree or evidence of courses taken subsequent to the degree have no bearing on this issue.

In addition to his work as a geophysicist, the petitioner claims to have developed two software programs, Efficient Frontier Analysis and Market Analysis. However, there is no evidence in the record to substantiate this claim or, in the alternative, to establish the impact that these software programs have had on the industry. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner submits letters from several witnesses to support his request for a waiver of the labor certification. Dr. [REDACTED] Senior Project Engineer for BJ Services Company, has known the petitioner since working with him in Canada for D&S Company. Together the petitioner and Dr. [REDACTED] coached a team of Chinese physicists to evaluate reservoir economic return, a joint venture project between Canada and China. Dr. [REDACTED] states, “[the petitioner’s] innovative approach in optimizing economic return enlightened my thoughts in reservoir engineering.” Dr. [REDACTED] goes on to say:

[The petitioner’s] research has many applications in various technical disciplines. His unique experience in both petroleum and finance industry is very rare indeed in this country. There are very few people who are capable of mastering both reservoir engineering and finance techniques in his level. [The petitioner’s] expertise will certainly reduce the risk involved in the development of oil/gas resource significantly and increase our oil/gas production...It is my professional opinion that [the petitioner’s] research, professional knowledge and extraordinary ability place him in the top 5% in the field of Energy Risk Analysis.

In another letter Dr. [REDACTED] states:

[The petitioner] has been important contribution to risk management in the petroleum industry. He introduced financial theory to me and we co-developed a new risk analysis technology, namely “Market Analysis”, which can provide early warning ahead of the market...The applications of market analysis technique have greatly improved the success of many investments. This technology is the best in the industry and many will attest to that.

Another witness, Dr. [REDACTED] Associate Professor of Finance at Seattle University, offers a letter of evaluation of the petitioner’s “credentials for purposes of rendering a professional opinion as to whether the contributions [the petitioner] is presently making to the field of Energy Risk Analysis substantially exceed those being made by other energy analysts.” Dr. [REDACTED] reaches the following conclusion:

In summary, I am impressed that [the petitioner] is very capable of grasping the essence of financial concepts and apply it with his multidisciplinary expertise in geophysical exploration to the energy-related financial research. Moreover, [the petitioner] is a highly creative researcher with a solid record of achievements. I believe he will make contributions that are important for the success of harnessing the future ‘energy crisis’ in the USA.

[REDACTED] Senior Engineer [REDACTED] states that the petitioner’s “experience and skills in both energy and finance industry helped one of our big projects being very successfully proceeded [sic].” Mr. [REDACTED] concludes that “it is fair to say that [the

petitioner] has received international recognition, and his expertise in both energy and finance industry is extremely needed for energy industry at a high level.”

Dr. [REDACTED] also speaks in very general terms about the petitioner’s accomplishments. Dr. [REDACTED] states that he has known the petitioner for over ten years and that their “respective experiences in the oil and gas industry are greatly complimented by [the petitioner’s] extensive knowledge in business and financial management. Dr. [REDACTED] further states that the petitioner’s “extensive academic training and industry experience background have demonstrated to be most valuable in developing certain computer software for specific applications in business and risk analysis.”

These witnesses make general statements as to the important contributions made by the petitioner and his high standing in his field, but these statements are not corroborated by direct evidence. Dr. [REDACTED], Dr. [REDACTED] and Mr. [REDACTED] know the petitioner because they have worked with him on projects in the past. There is no evidence in the record to demonstrate the qualifications of any of these witnesses and, therefore, the accuracy of the general assertions that the petitioner ranks in the “top 5% in the field of energy risk analysis” or that he “has received international recognition”. While we do not doubt the veracity of these witnesses, the granting of a waiver of a labor certification requires documentary evidence that the petitioner has had a substantial impact on his field and that the petitioner’s work outweighs the work of others in the field. Such documentary evidence is not present in the record.

While Dr. [REDACTED] is the only witness that has not worked with the petitioner, it appears that his evaluation letter was written based on solicitation by the petitioner, rather than actual familiarity with the petitioner or his work. Dr. [REDACTED] does not indicate that he knows of the petitioner independently because of the petitioner’s important research or software programs, but instead states that “as a result of my review on his research...it is my professional opinion that the contribution made and being made by [the petitioner] substantially exceed those being made by the majority of energy risk analysts in related fields.” Further, while impressive, Dr. [REDACTED] resume does not indicate that he is an expert in the field qualified to make such a review.

The petitioner also submits evidence of professional registration in the Association of Professional Engineers, Geologists and Geophysicists (APEGGA) granted in 1985. The letter submitted from [REDACTED] APEGGA Director of Registration, states that registration was granted “on the basis of [the petitioner’s] 1976 Bachelor of Arts Degree in Pure Math from the University of Calgary, Canada; courses in Geophysics from the University of Calgary, and a combination of academic and experience qualifications in total satisfactory to the APEGGA Board of Examiners.” There is no evidence that the petitioner was granted membership as a result of his important contributions to the fields of engineering, geology or geophysics. Given the criteria stated in the membership letter, it appears that any person who has obtained the requisite combination of a Bachelor’s degree and work experience in a field related to engineering, geology, or geophysics, would be eligible for membership. Therefore, while notable, membership in this organization does not establish the petitioner’s eligibility for a waiver of the labor certification.

Most curiously, the petitioner submits a job offer letter from ██████████ General Manager of Prime Time Products, a company involved in the import and distribution of watches. According to the petitioner's ETA-750B, he worked for Prime Time Products as a financial analyst from January 2001 until October of 2001. We note that the petition was filed on April 20, 2001. The job offer states that petitioner's responsibilities will include "all accounting and financial functions of the company, including but not limited to providing foreign currency/interest rate risk management, cash management and preparation of financial statements." For a person (as indicated by the petitioner's witnesses), who is internationally known in his field and in the top 5% of the oil and petroleum industry, we are perplexed as to why the petitioner would accept a job as financial controller for a watch importer and distributor. If the petitioner and his skills are so valuable, and his work is of such great importance to the oil and petroleum industry, we question why he was offered and accepted employment in a field unrelated to the one listed on the ETA-750B form.

While acknowledging the intrinsic merit of the petitioner's work, the director denied the petition, finding that the petitioner had few demonstrable prior achievements and that his contributions did not warrant a waiver of the job offer requirement that, by law, attaches to the classification that the petitioner chose to seek.

On appeal, the petitioner requests that we reconsider evidence of his prior achievements and eligibility for a national interest waiver. The petitioner points to his academic achievements as evidence of his prior achievements. The petitioner references his previously discussed thesis and a half-page "market analysis" written jointly by the petitioner and Dr. ██████████. The petitioner claims the market analysis technology has been "successfully applied to many investment projects." However, the petitioner has not submitted evidence to show any projects that have used the technology he developed. Further, the petitioner states that the principle of his technology can be applied to "other risk investment in the futures market, including currency, gas and electricity hedging." While this may be true, the petitioner has failed to show how this technology had impacted any of these fields by the filing date or that leaders in these fields recognize the existence of this technology. In a letter submitted prior to the director's decision, Dr. Chen stated that "many will attest" that the market analysis technology is the best in the industry. We note that no such attestations from any person in the industry have been submitted on appeal.

The petitioner also submits a letter from The University of Lethbridge for an appointment to teach International Finance for the spring 1998 semester. The appointment letter appears to be a standard letter issued by the University when hiring any new teacher for a semester. It does not demonstrate that the petitioner's knowledge and skills are any different from any other teacher hired by the University to teach the course or that the petitioner was sought because of his significant contribution. While such an appointment does establish that the petitioner is qualified to teach university students on the subject of International Finance, it does not demonstrate that his capabilities are so exemplary as to warrant a waiver of the labor certification requirement.

As further evidence of his prior achievement, the petitioner submits evidence of his "China Marketing." First, the petitioner claims to have established a "business channel for China Marketing focus[ing] on [an] Oil [and] Gas joint venture project." Second, the petitioner submits a letter he wrote as President of the Canada-China Energy Resources Development Association. The letter invites Dr. [REDACTED] from the University of Calgary to prepare a presentation based on his expertise in Gas Condensate Recovery Technology. The petitioner submits this letter to show his organization and leadership in a delegation to visit the Ministry of Petroleum Industry in Beijing, China. While we take note that the petitioner appears to have played a leading role getting the delegation together we also note that the letter clearly documents Dr. [REDACTED] as "recognized within the industry". Such recognition is what we look for when determining if a petitioner qualifies for a waiver of the labor certification. However, the petitioner has not established that he is recognized within the industry and has provided no witness letters from anyone such as Dr. [REDACTED] to document that recognized experts within the industry are knowledgeable of the petitioner's work and can attest to the major impact his work has made on the industry.

The petitioner also submits what is purported to be a letter of intent between the Canada-China Energy Resources Development Association and China Technology Exchange Centre for the feasibility study of a Joint Venture Project. However, the document is written in Chinese and the petitioner has not provided a translation. By regulation, any document containing foreign language submitted to the Bureau shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. §103.2(b)(3).

A third letter written by Dr. [REDACTED] and submitted on appeal, refers to this joint venture project and states that the petitioner's "exceptional ability and prior achievement in China marketing allow him to successfully finalize joint venture projects between Ministry of Petroleum and D&S engineering." Again, these generalized statements by Dr. [REDACTED] are not supported by any other credible evidence. While it may be true that the petitioner, because of his ability, was able to secure the joint venture project, the petitioner has failed to back such assertions with tangible evidence. Further, even if supported by evidence, the fact that the petitioner was able to secure a joint venture project does not establish his eligibility for a waiver.

Finally, the petitioner submits a reference letter from Albie Brooks, Senior Lecturer, Victoria University. The reference letter, written two years prior to the filing of the petition, offers no evidentiary value to establish that the petitioner's work has had any impact on his field of endeavor or eligibility for a national interest waiver.

The record does not indicate that the petitioner or his work has achieved a reputation beyond that of his former colleagues and co-workers, or that the petitioner has had, or will have, a greater positive impact on the United States than another would have while working on the same projects. Further, while we do not dispute the overall importance of the petitioner's

field of endeavor, the petitioner has not explained how he stands to benefit the United States to a substantially greater degree than would a fully qualified United States worker in the same capacity.

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 profession, 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.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.