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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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BS

ADMINISTRATIVE APPEALS OFFICE
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Washington, D.C. 20536

[REDACTED]

File: [REDACTED] Office: CALIFORNIA SERVICE CENTER

Date: **JUL 17 2003**

IN RE: Petitioner:
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)

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 seeks employment as an international business public relations representative. Formerly a diplomat, at the time of filing the petitioner worked for Special Services, Inc., as its international public relations representative for Asia. 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.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the 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 the pertinent 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 regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now the Bureau] 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 his work and explains why he believes that he merits a national interest waiver:

I have been a career diplomat for more than twenty years and I have been involved in many aspects of the development and improvement of the economy. . . .

In the world of globalization, where companies face competition not only locally but also internationally, it has become imperative for enterprises to widen their knowledge of international trade in order to survive. . . .

I strongly believe that the following goals will create the right economic atmosphere within the United States, as a solution of the integration of its economy to global world [sic]:

- Develop a plan to promote the international business objectives and programs to the respective business communities. . . .
- Assist other organizations in order to identify potential investors for investment and development opportunities.

- Plan, promote and coordinate trade missions, and trade shows to give prominent exposure and discounted participation rates.
- Offer program services and assistance in areas including: market research, information on the requirements and incentive programs for doing business in other countries, and assistance in structuring and negotiating deals with qualified buyers.
- Promote educational and cultural related exchanges to further cooperation and understanding between the different cultures, and create a favorable environment for business relations. . . .

My experience spans the gamut of U.S. business sectors – from basic manufacturing to high technology, and service exports and foreign investments. In addition, it would promote the formation and use of export trade intermediaries and the development of long term joint export ventures by U.S. firms that compete in the domestic market.

The petitioner's initial submission includes his resume, showing his diplomatic appointments since 1981; copies of various certificates issued to him in recognition of his diplomatic service; and documents reflecting the petitioner's educational background.

The director requested further evidence that the petitioner has met the guidelines published in *Matter of New York State Dept. of Transportation*. The director stated that the initial evidence did not show how the petitioner's work will benefit the U.S., at a national level, to a greater extent than the work of other business consultants. In response, the petitioner offers general assertions about the increasingly international nature of business and commerce, the increasing importance of an international background, and the growing proportion of foreign-born individuals attending U.S. graduate schools. The petitioner asserts that his goal is to increase the "export potential" of "medium and small American companies . . . that do not have extensive international trade experience with a particular region of the world." The petitioner asserts that his "experience and expertise within the international arena . . . would be a valuable asset to developing a program with emphasis in cultural awareness and international business for medium and small companies." The petitioner does not specify the extent to which he has already succeeded in developing at least a working prototype of such a program.

The petitioner has submitted further copies of documents pertaining to his education, personal character and past career as a diplomat representing the government of Peru. While these documents establish the petitioner's past work in diplomacy, he does not seek employment as a diplomat and therefore these documents serve as background material rather than persuasive evidence in support of the waiver application. The petitioner also submits a copy of his membership card from the National Association of Realtors, but he does not explain the significance of this document.

The petitioner submits several witness letters. Rosario Tucker, president of Special Services, Inc., describes the petitioner's work:

[The petitioner] has helped to increase the export of our current clients to the Asian region, but he also helped us to attract a wide variety of new U.S. exporters interested in penetrating markets such as China, Hong Kong, Indonesia, Thailand and the Philippines.

Among the most important duties of [the petitioner] as the corporation's "International Public Relations Representative" included the creation of a project to capture potential exporters within the State of California. This project, in addition, incorporated a unique approach based on cultural elements to benefit the competitive advantage of our current and new clients to successfully export their products and services to different parts of the world regarding the cultural barriers.

[The petitioner's] experience and knowledge of more than 20 years in International Relations and Business has allowed us to promote the businesses of our existing clients and servicing their companies' needs in California as well as other states of the Nation. He has incorporated into our organization basic elements that have been favorably used by our clients in their process of international negotiations. . . .

[The petitioner's] most valuable contribution to our organization lies in the extraordinary success of our clients during this year in launching their products and services in the international arena, overcoming cultural barriers.

Finally, I consider that [the petitioner's] experience and knowledge in international business will benefit companies in the whole nation interested in becoming more competitive in foreign markets by approaching new strategies based on international cultural literacy.

█ does not provide specific information regarding the extent of the petitioner's economic impact, the volume of export business attributable directly to the petitioner, or other concrete data.

Other business figures offer letters in support of the petition. █ chief operating officer of Ohio Machine & Manufacturing Company, Inc., "a U.S. Company dealing in the design and manufacture of tooling to produce new giant earthmoving tires for mine and construction use," states that the company contacted the petitioner as part of its efforts to expand into "the South American and Western European markets." Mr. █ states that the petitioner is "a desirable candidate," and that the petitioner's "vast expertise will help us in our efforts to expand," but he does not clearly indicate whether the company has, as of yet, actually utilized the petitioner's talents. Mr. █ does not indicate that his company has, in fact, successfully expanded internationally as a result of the petitioner's efforts.

█ past president of the Peruvian Chamber of Commerce of California, states:

[The petitioner is] an outstanding professional with proven success in international relations and whose extensive experience and expertise would definitely benefit the National Interest of the United States of America. . . .

As Deputy Consul General of Peru in San Francisco, [the petitioner] designed and promoted the creation of an international business partnership agreement . . . [which] allowed the strengthening of economic ties between Peru and the Oakland-San Francisco Bay area. . . .

As an individual holding a position of office in our organization, he played an important role in the development of the Chamber as Director of our international trade division. His experience allowed us to become an organization of prestige by being recognized through the U.S. Department of Commerce and other private and governmental trade associations around Southern and Northern California, as well as The National Association of Peruvian Institutions, located in Washington, D.C. . . .

[The petitioner] also contributed with us to become part of *The Trade in Service Unit* of the International Trade Centre, an organization that assists developing countries to increase their ability to export. This organization is part of the United Nations.

The AAO is in possession of a document signed and notarized by [REDACTED] which suggests that [REDACTED] and [REDACTED] are the same individual.

The record shows that the petitioner's work with the Peruvian Chamber of Commerce has attracted a small amount of local press attention, but the record does not readily show how the petitioner's efforts differ in extent or importance from similar endeavors around the world. Acting in furtherance of international trade does not automatically qualify the petitioner for the waiver, because no blanket waiver exists for aliens in that field of endeavor.

The director denied the petition, acknowledging the petitioner's "well established" credentials as a diplomat but finding that the petitioner's "abilities as an international business consultant are mostly untried and unproven based on the documentation provided." The director found that the petitioner's impact on U.S. businesses appears to be primarily local, and that the petitioner has not significantly distinguished himself from others in the same field of endeavor.

On appeal, the petitioner submits arguments but no new evidence. The petitioner states "I strongly believe that my experience [in] the international arena specialty on International Trade and Business Affairs [has] a decisive importance in this area in the National Interest of the USA." The petitioner asserts that his prior experience should not be discounted merely because he worked as a diplomat rather than in the private sector. Be that as it may, it is valid for the director to observe the petitioner's apparent lack of prior experience in private business, which

forecloses the possibility of the petitioner's establishing a prior track record in the occupation he now seeks.

The petitioner observes that his specialty, while a diplomat, was "International Business and Trade," and that he has earned an MBA in order to gain further expertise in the field. We do not question that the petitioner's background is sufficient to ensure his competence as a business consultant. Nevertheless, the petitioner seeks not only immigrant classification as a member of the professions holding an advanced degree, but also the added benefit of a national interest waiver. To qualify for this additional benefit, it cannot suffice for the petitioner to show that, given his past background in diplomacy, he is confident of his future success.

The record shows that the petitioner is a highly experienced diplomat, and that the petitioner and his employer believe him to be well suited for the projects described above. The record, however, contains minimal information about the petitioner's existing accomplishments in his present occupation. We cannot, based on the materials submitted, conclude that the petitioner stands out from his peers in the occupation to such an extent that he warrants 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 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.