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Bureau of Citizenship and Immigration Services

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OFFICE OF ADMINISTRATIVE APPEALS  
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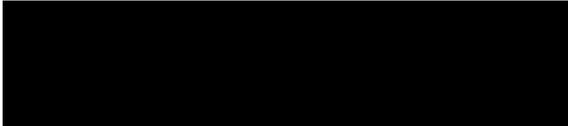
JUL 23 2003

File: [REDACTED] LIN 00 010 52553 Office: NEBRASKA SERVICE CENTER Date:

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)

ON 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 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, Nebraska 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 a "humanitarian ophthalmologist." At the time he filed the petition, the petitioner was the chief consultant ophthalmic surgeon at the Eye Foundation Hospital in Lagos, Nigeria. He was also the director of graduate training at the Lambo Eye Institute in Lagos. 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 did not dispute that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but concluded 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 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 obtained a medical degree in 1976 from the University of Lagos, Nigeria. He also spent several years abroad, completing post-graduate and professional training at the Royal College of Surgeons in Ireland, the Royal College of Physicians and Surgeons of Glasgow, and the Tennent Institute of Ophthalmology at the University of Glasgow. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue 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 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 the 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 United States worker having the same minimum qualifications.

The director sent two requests for evidence on Oct 30, 2000 and March 26, 2001, respectively. From counsel's responses, it became clear that the petitioner was not applying for a national interest waiver pursuant to section 203(b)(2)(B)(ii) of the Act. This provision establishes special requirements for alien physicians who are willing to work in an area or areas of the United States designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at facilities operated by the Department of Veterans Affairs.

Counsel responded to both requests for evidence and asserted that the documentation submitted supports the approval of a national interest waiver pursuant to *Matter of New York State Dept. of Transportation, supra*. Counsel explains that the petition is not based on the petitioner's desire to actively perform medical services in the United States. Counsel asserts that the petitioner's ability to organize medical networks to further his humanitarian and philanthropic work serves the national interest of the United States. He contends that the proposed benefit will be national in scope in that skilled ophthalmologists will be able to better serve indigent people in the United States who are unable to receive adequate health care. The director did not dispute that this occupation has substantial intrinsic merit and that the proposed benefits of the petitioner's services could be characterized as national in scope. The remaining issue is whether the petitioner will serve the national interest to a substantially greater degree than would an available United States 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 he seeks. 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.

The record includes evidence that the petitioner received the "People's Eye Care Award" in 1996 from *Healthcare*, a Nigerian magazine; a 1998 award from the "Nigerian Ilesa Grammar School Club 6872" recognizing his contributions to the field of ophthalmology in Nigeria; and a Certificate of Excellence received from officials in Ghana for services rendered during a three day medical clinic offered by doctors from Nigeria and the United States. The evidence also indicates that the petitioner served on several boards and committees in Nigeria dedicated to improving eye care and that his work through his Eye Foundation has received favorable notice in the Nigerian media. The record also reflects that the "International Hospital Relief Foundation" in Miami, Florida bestowed its "1999 Physician Humanitarian Award" on the petitioner. While such evidence could represent recognition for achievements and significant contributions to his field, that is simply one criterion for exceptional ability found at 8 C.F.R. § 204.5(k)(3)(ii)(F). We cannot conclude that satisfying one, or even the requisite three criteria, for a classification that normally requires a labor certification warrants a waiver of the labor certification requirement in the national interest. As set forth in *Matter of New York State Dept. of Transportation*:

Because, by statute, 'exceptional ability' is not by itself sufficient cause for a national interest waiver, the benefit which the alien presents to his or her field of endeavor must greatly exceed the 'achievements and significant contributions' contemplated in the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F). Because the statute and regulations contain no provision allowing a lower national interest threshold for advanced degree professionals than for aliens of exceptional ability, this standard must apply whether the alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree.

*Id.* at 218-219.

The petitioner has submitted copies of four technical papers in which he is listed as the lead author, but it is unclear where or if these papers have been published or presented. The record contains no evidence that the publication or presentation of clinical findings is unusual in the petitioner's field.

The petitioner submitted several reference letters in support of his petition. Dr. [REDACTED] submitted two letters in support of the petition. He is a physician of osteopathic medicine in Miami, Florida. In his first letter, he states:

As the CEO and Founder of the International Hospital Relief Foundation, Inc., a non-profit 501 (c) organization, I have recently completed a medical mission. This mission provided eyecare and general medical healthcare services in the rural cities of Nigeria-Uyo, Calabar, Port Harcourt and Lagos. In preparation for this meeting I attended The American Academy of Ophthalmologists Annual Meeting in San Francisco and had the rare opportunity to meet [the petitioner]. I was very much aware of who he was being a native Nigerian and familiar with his outstanding literary work. In addition [the petitioner] is one of the pioneers for medical missionary work in Nigeria and as such is world renowned. . . I was quite honored to be in such distinguished company.

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Upon our arrival in Nigeria, [the petitioner] provided my U.S. based medical team with accommodations, transportation, and all the necessary information, which enabled the International Hospital Relief Foundation, Inc. to carry out our medical mission. . . . I also had the privilege of working directly with [the petitioner] when the medical team traveled to St. Luke hospital in Uyo and witnessed his performance during several surgeries. He is an extremely competent and highly skilled ophthalmic surgeon.

Because of my first hand knowledge and respect for [the petitioner's] commitment and competency, I have invited him to join my medical practice in my office which serves the underprivileged and rural communities of Homestead, Nalajia, Florida City, Homestead Air Force Base, and Florida Keys, to practice rural ophthalmology.

Dr. [REDACTED] initial letter does little to support counsel's argument that the petitioner seeks only to establish medical networks, rather it is an offer to practice medicine.

Dr. [REDACTED] subsequent letter in September 1999 confirms that the petitioner received the "1999 Physician Humanitarian Award" from the International Hospital Relief Foundation Inc. Dr. [REDACTED] states that the award was given to the petitioner because of his "unyielding and exceptional medical relief work here in the United States and abroad. He successfully organized and safely led a missionary team of U.S. physicians and other medical personal on a three-week expedition into the rural communities in West African countries." [sic] We would note that while it is clear that Dr. [REDACTED] highly regards the

petitioner, there is no corroboration in the record that demonstrates that the petitioner has ever performed medical relief work in the United States.

██████████ is a medical coordinator for the International Hospital Relief Foundation, Inc. She has worked with the petitioner for the past five years. She provides similar information as Dr. ██████████ and confirms that the petitioner has facilitated the growth of the medical teams providing medical services abroad for the organization. Ms. ██████████ asserts that the petitioner will be a great asset to the development of rural ophthalmic practice in the United States, but provides no details in this regard.

Dr. ██████████ is an ophthalmologist with the Evergreen Eye Center in Federal Way, Washington, and a member of the American Academy of Ophthalmology. He is acquainted with the petitioner through their mutual humanitarian work with the Deseret International Foundation and the American Academy of Ophthalmology. Dr. ██████████ praises the petitioner's surgical skills and states that the petitioner's pioneering work in glaucoma surgery would be of great benefit in the United States. Although this letter recognizes the petitioner's surgical skills, there is no explanation as to how there is a relation to establishing medical networks to serve the poor in the United States. It is also not clear that Dr. ██████████ endorsement represents the official opinion of the American Academy of Ophthalmology.

██████████ an assistant professor of ophthalmology at Washington University affiliated with the Barnes Retina Institute, states that he has known the petitioner for the past five years in various professional settings and has interacted with both him and his family who have been living in St. Louis. Dr. ██████████ describes the petitioner as the most skilled and famous ophthalmologist in West Africa. He praises the petitioner's humanitarian work and states that with United States status, the petitioner would be even better able to carry out his service to Nigeria and provide coordination with American efforts. Dr. ██████████ did not provide any details why permanent United States immigration benefits are necessary to continue to provide humanitarian ophthalmic service to Nigeria.

██████████ a clinical professor of ophthalmology at the University of Minnesota, has known and worked with the petitioner for the past two years. He also regards the petitioner's humanitarian work in Nigeria highly and states that the petitioner will continue this mission, but "with permanent residency status, he will be eligible to carry out his humanitarian projects for the poor in this country as well." Professor Standefer provides no further details on this issue.

██████████ is a member of the board of directors of the Deseret International Foundation. He confirms the other witnesses' observations of the petitioner's commitment to the disadvantaged in Nigeria and asserts that he and the Deseret International Foundation have been strong supporters of the petitioner's efforts.

Professor ██████████ of the Lambo Institute in Nigeria states that he has known the petitioner since his college days. He praises the petitioner's abilities as a clinician and teacher and states that he has always been more enterprising, intelligent and industrious than his colleagues.

██████████ is the President of the Deseret International Foundation in Provo, Utah. Dr. ██████████ characterizes the petitioner as a man of great integrity. He could not envision the petitioner leaving Nigeria permanently, but understands the importance to the petitioner's work "(professional and humanitarian) and his family that he have the options of coming easily to the States periodically:"

[The petitioner] needs the chance to rub shoulders with colleagues in the States in order to keep his skill level on the cutting edge and to recruit volunteers for the training program in Lagos.

His children, some of whom are now in their late teens have never lived in Nigeria except as children. Nigeria is not an easy place to move into as adolescents, so Kunle has chosen to have several of them attend school in the U.S. Naturally he would like to spend some extended time with them during the year.

While this endorsement is similar to some of the others in recognizing the petitioner's sterling personal qualities, it also suggests that the request for a national interest waiver is meant to serve the petitioner's convenience as much as anything else. *See Matter of New York State Dept. of Transportation*, at 223.

It is similar to some of the other testimonials and evidence in the record which demonstrate that although the petitioner has provided philanthropic ophthalmic services to the disadvantaged in Nigeria and other west African countries, there is little evidence to suggest that these skills would automatically translate to the United States or that the labor certification process should be bypassed.

After a careful review of the record, we concur with the director's finding that although the petitioner has provided great benefits to some of the underprivileged population in Nigeria, he has not established that a waiver of the requirement of an approved labor certification would be in the national interest of the United States or that the national interest would be adversely affected if a labor certification were required.

Although counsel's appeal asserts that the director mischaracterized and misinterpreted the information contained in the testimonial letters, we note that on the I-290B, Notice of Appeal, counsel indicates that he will send a brief and/or evidence to the AAO within thirty days. The appeal is dated August 7, 2001. As of this date, more than 22 months later, no further documents have been received.

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, U.S.C. § 1361. In this case, the petitioner has not sustained that burden.



**ORDER:** The appeal is dismissed.