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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3rd Floor
Washington, D.C. 20536

[redacted]

JUN 0 3 2003

File: WAC 01 296 52638 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary:

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 record reflects that the alien filed the I-140 with the California Service Center on September 27, 2001, listing both himself and Hsi Lai University as the petitioner under Part 1 of the form. The petition, however, was signed not by a representative from Hsi Lai University, but by the alien himself. Service regulations at 8 C.F.R. § 103.2(a)(2) state: "An applicant or petitioner must sign his or her application or petition." Therefore, the alien shall be considered to be the petitioner.

The Notice of Entry of Appearance as Attorney or Representative, Form G-28, was executed by the attorney [redacted] on behalf of Hsi Lai University. The form was signed by [redacted], Executive Director at Hsi Lai University. The record does not contain a Form G-28 executed by [redacted] on behalf of the petitioner. Therefore, the petitioner is considered to be self-represented. All representations of counsel will be considered; however, counsel will not receive notice of this decision.

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 and/or a member of the professions holding an advanced degree. As indicated on his Immigrant Petition for Alien Worker, Form I-140, the petitioner seeks employment as the President/CEO of a non-profit university. The petitioner asserts that an exemption from the requirement of a job offer, and thus 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. -- 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 claims eligibility as an alien of exceptional ability. The director determined that the petitioner qualifies as an advanced-degree professional. We concur. Therefore, an additional finding of exceptional ability would be of no further benefit to the petitioner. In addition, the director found that the petitioner did not establish that an exemption from the requirement of a job offer would be in the national interest of the United States.

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 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 <u>prospective</u> 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.

Counsel asserts:

> For more than thirty years [the petitioner] has devoted himself to educational and philosophical studies, and sustained both national and

> international acclaim.[1] While in Taiwan, he led a remarkable career as an educator whose contribution and involvement extended to all aspects of the national education system.
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> * * *
>
> For the past three years, [the petitioner's] efforts have already produced significant results affecting the nation as a whole in educational development and cultural enrichment. His work will also help infuse modern American society with the highest human values of Western and Eastern cultures. Thus, his continued input and planning will ensure the benefit to the whole American society uninterrupted.

Counsel's assertions as to the petitioner's "contribution and involvement" with the national educational system and the "significant results affecting the nation" are not supported by evidence in the record. As the assertions of counsel do not constitute evidence, simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). See also *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner's initial submission consisted primarily of the petitioner's resume and copies of documentation pertaining to his educational credentials. While these documents establish that the petitioner is qualified to work as the President/CEO of Hsi Lai University, they do nothing to establish that the petitioner's work serves the national interest to a greater degree than other qualified Presidents/CEOs. While the general background about the petitioner's accomplishments and current position as President/CEO of Hsi Lai University establishes the intrinsic merit of the petitioner's work, the President/CEO of a university located in California does not inherently have a national impact, nor does it establish that the petitioner has had a far greater impact than other qualified individuals in his field.

The petitioner also submits letters from four witnesses attesting to the importance of his work. These letters, however, are without exception from individuals who either taught the petitioner in the past or currently work with him at Hsi Lai University. The letters contain no direct evidence that the wider education community has taken specific notice of the petitioner's work.

The director requested further evidence that the petitioner has met the guidelines published in *Matter of New York State Dept. of Transportation*. In response, counsel states that the petitioner has, in fact, met those guidelines. Counsel provides little new evidence but does cite a number of textbooks and articles authored by the petitioner. However, counsel does

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[1] We note that counsel has misapplied the standard required for aliens of extraordinary ability under section 203(b)(1)(A) of the Act. Sustained national or international acclaim is not at issue in this case as the petitioner is filing under section 203(b)(2) as an alien who is a member of the professions holding an advanced degree/alien of exceptional ability.

not submit any evidence to establish the impact that these writings have had on the petitioner's field of endeavor. Publication, by itself, is not a strong indication of impact, because the act of publishing a book or an article does not compel others to read it or absorb its influence. Numerous independent citations would provide firm evidence that others in the field have been influenced by the petitioner's work. Alternatively, if there are few or no citations to the work, it suggests that the work has gone largely unnoticed by the larger community and it is reasonable to question how much impact, and national benefit, the petitioner's work has actually had.

Counsel also points to a national award for excellence that the petitioner was awarded in 1990 by the Ministry of Education, Taiwan. While certainly impressive, such an award, given to the petitioner because he was one of the best teachers in Taiwan more than ten years ago, does not establish that the beneficiary is currently a leader in education. Such an award also does not demonstrate that the petitioner has had any impact in the United States.

The director denied the petition, stating that the petitioner demonstrated the intrinsic merit of the petitioner's work but that the evidence was insufficient to establish that the proposed benefit would be national in scope and that the national interest would be adversely affected if the petitioner were required to obtain a labor certification.

On appeal, counsel submits no new evidence but states the following as the petitioner's reason for appeal:

> [The petitioner] is not only the President of Hsi-Lai University [sic] but also a well-respected Educator/Scholar; The benefit to the U.S. of [the petitioner's] publications/education in Confucianism, Ethics and comparative Morality (Philosophy) is national in scope because it will decrease the level of hostility between religions and ethnicities, thereby eliminating much of the violence and enmity that exist between different racial and religious groups; [The petitioner] can and also applied ETA 750 through EDD and DOL as a separate option. However, this is not a relevant basis to deny this case.

In this instance, the petitioner's work is limited to one particular university where he is the President/CEO. Therefore, the impact of his work is so attenuated at the national level as to be negligible. While we believe that petitioner's work serves a greater national goal, the same can be said of any competent educator in his or her field. It does not follow that every alien who is a good educator qualifies for a waiver or that these educators should be exempted as a class from the protection of the labor certification process. He has not demonstrated that his work in the past as an educator or that his current work as a President/CEO involves general policies or models that have been or will be implemented in any location beyond his particular university. The record does not reflect a formal adoption of the petitioner's theories or recommendations at the national level, much less that the petitioner's work has decreased the level of hostility between religions and ethnicities, as counsel asserts. As such, the petitioner has not satisfactorily demonstrated that his work is national in scope.

Further, in denying the petition, the director clearly indicated that the national scope issue was not the only basis for denial. Therefore, even were we to find that the petitioner's work was national in scope, it is only one prong of the national interest test described in *Matter of New York State Dept. of Transportation*. The petitioner still must show that the national interest would be adversely affected if the labor certification is required.

On appeal, counsel correctly states that the act of the petitioner's application for an ETA 750 is not a relevant ground for denial. It is unclear why counsel mentions this on appeal as it was not mentioned as a ground for denial by the director. The fact remains that for the instant petition the petitioner requests a waiver from the labor certification process. Therefore, even if the petitioner were to somehow secure an approved labor certification, we could consider that document only in the context of a newly filed petition.

The final basis for the denial of the petition, and for the dismissal of this appeal, is that the petitioner has failed to demonstrate that he will serve the national interest to a greater extent than other Presidents/CEOs of universities. It is not sufficient simply to list the services that the petitioner provides, articles and books that he has published, or conferences attended. The petitioner must demonstrate that his individual contribution has had a disproportionately greater effect in education, as compared with the efforts of other university Presidents/CEOs. The record lacks direct evidence that the petitioner's work has attracted more notice, or had a greater impact, than that of countless others in the same field.

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.