

PUBLIC COPY

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

B5

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

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



JUN 10 2003

File: WAC 02 099 53511 Office: CALIFORNIA 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)

IN 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 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, 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 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 an International Litigation Attorney. 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 director determined that the petitioner qualifies as an advanced-degree professional. The director further 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. We concur.

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.

We concur with the finding of the director that the proposed employment, international litigation, has substantial intrinsic merit. The director also found that the proposed benefits of the employment are regional rather than national in scope. While generally the impact of legal services is geographically limited, the petitioner has established that the outcome of litigation he is involved in could conceivably affect consumers nationwide. We thus withdraw this finding of the director, and find that the proposed benefit of the employment may be national in scope. It remains then to determine whether the petitioner 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.

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 beneficiary's contributions in the field are of such unusual significance that he 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. The petitioner must demonstrate the beneficiary's past history of achievement having some degree of influence on the field as a whole. *Id.* at note 6.

This petitioner's initial submission contained general background about the petitioner's accomplishments, and past and current positions. The initial submission also contained the petitioner's resume and copies of documentation pertaining to his educational and legal credentials. While these documents establish that the petitioner is qualified to practice as an

attorney, they do nothing to establish that the petitioner's work serves the national interest to a greater extent than other qualified attorneys. The petitioner's career choice does not inherently qualify him for a national interest waiver, and there is no blanket waiver for international attorneys.

The petitioner also submitted reference letters and employment verification letters from previous employers. While all of the witnesses speak very highly of the petitioner, his skills, and his work, the witnesses, without exception, have either taught the petitioner while he was a student, worked with the petitioner and his firm in the past, or currently work with the petitioner at King and Wood LLP. The letters provide no direct evidence that the wider international litigation community has taken specific notice of the petitioner's work.

The remainder of the initial submission consisted of two journal articles and one paper written by the petitioner. One of the journal articles was published in *American Property Law*, while the other was published in *Wisconsin Law Review*. The paper submitted by the petitioner was prepared for the International Conference of Legal Issues involving North America and Asia. The petitioner, however, failed to demonstrate the impact that these articles have had on his field of endeavor. He has not submitted any evidence of citation of his work in the international litigation community or other evidence that these publications have had any effect on the community. 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.

The director requested further evidence that the petitioner has met the guidelines published in *Matter of New York State Dept. of Transportation*. In response, the petitioner submitted more witness letters, legal documents from cases he has handled, and other extraneous evidence.

Although the witness letters describe the petitioner's expertise and value to his current and former projects, they do not establish that the petitioner's work has attracted significant attention throughout the legal profession, or more specifically to the field of international litigation. Like the witness letters in the initial submission, each witness letter submitted as a result of the director's request for evidence is from a person who either knew the petitioner through a case jointly worked or as a judge on one of the petitioner's cases. However, none of these witnesses can be considered independent, in the sense that they came to know the petitioner through the importance of his prior work rather than as a result of joint projects or cases.

The Honorable [REDACTED] and the Honorable [REDACTED] both knew the petitioner from presiding over one of his cases. Each witness attests to the petitioner's diligence and hard work but then states that the petitioner "informed" or "advised" him of the other work that petitioner had been involved in. Clearly, these witnesses know nothing of the petitioner outside the one particular case they were involved in with the petitioner.

They do not claim any knowledge of the petitioner's work or the importance of the petitioner's contribution beyond the case worked on with the petitioner.

██████████ a former colleague of the petitioner, states:

I came to know [the petitioner] in early 2001 when he came to Beijing and we worked jointly on a corporate merger project between two companies in China and U.S. [The petitioner] has a very strong legal background and he is capable of handling complex legal issues such as international merger and acquisitions and international multi-million dollar lawsuits. After China entering into WTO, we have more and more legal projects involving multinational companies, foreign clients, or joint ventures. Legal professionals with background in both China and the U.S., such as [the petitioner] are very shorthanded and vital to these transactions.

Mr. ██████████ letter describes skills that are typically required of competent attorneys in the international law arena. Skill and success in assisting companies merge or acquire other companies is an inherent duty of the petitioner's occupation. Further, the implication in Mr. ██████████ letter, which we cannot accept, is that the petitioner qualifies for a national interest waiver simply by virtue of having a background in Chinese legal affairs. Mr. ██████████ argument that there is lack of legal professionals with knowledge of both China and the U.S. is also not persuasive. Knowledge of the legal system in both China and the United States is a requirement that can quite easily be stated in a labor certification. Neither the petitioner's unique skills and abilities nor the fact that there may be a dearth of legal professionals knowledgeable about China is sufficient reason for waiving the labor certification requirement.

The petitioner also submitted a letter from ██████████ Special Assistant to the President of the American Bar Association (ABA). This letter, while indicating the ABA's recognition of the importance of international lawyers for the global economy, makes no mention of the petitioner's specific abilities or contribution to the field of international law. As stated above, the intrinsic merit of a given field does not equate to a petitioner's eligibility for the national interest waiver. The fact that the petitioner is a member of the ABA and licensed to practice in the United States does not set him apart from any other practicing attorneys, much less show that his work contributes to the national interest of the United States.

Two of the petitioner's former law professors, ██████████ and ██████████ write letters about the petitioner indicating that the petitioner was "diligent," "hard-working and curious," and that the petitioner was "a leader among the Asian students." However, neither of these two witnesses claims any knowledge of the petitioner or his accomplishments beyond the time the petitioner was a student at the University of Wisconsin Law School, as one would expect if the petitioner's contribution to his field was substantial. In fact, Professor ██████████ states:

Although I have not kept up with [the petitioner] since he left Madison, I would imagine that he has continued on the course he set for himself when he first began to study law at Beijing University...

As a whole, the statements from these witnesses do not reflect that the petitioner has attracted recognition beyond those who have worked with him directly, or that the petitioner's accomplishments are of demonstrably greater value than the achievements of other attorneys employed in comparable positions at various international law firms.

The petitioner submitted a final witness letter from Reverend [REDACTED] BMW Missionary, where the petitioner attends church. While exhorting the petitioner and his family's services to the community, Reverend [REDACTED] does not add any value to the determination that the petitioner's work may be in the national interest. Although Reverend [REDACTED] notes the petitioner has offered his services as an attorney to those in the community, such services do not demonstrate that the petitioner's work as an international litigation attorney is more valuable than that of other qualified litigation attorneys.

The petitioner also submitted various court documents that he presumably prepared or assisted in preparing. However, the petitioner has not shown that these documents are anything more than routine complaints, briefs, motions, and appeals that are filed with courts across the United States on a daily basis by thousands of other attorneys. We do not dispute that the petitioner is a talented attorney; the issue is whether his talents, judged in comparison with other qualified attorneys, warrant a waiver of the labor certification.

The director denied the petition indicating that the petitioner had not shown that a waiver of the job offer and labor certification would be in the national interest.

On appeal, the petitioner states that when the director requested further evidence he did not request additional evidence to show that the petitioner's work was of substantial intrinsic merit or that it was national in scope. We disagree with the petitioner's statement and note that the director refers to "the national benefit," "national level" and "substantial intrinsic merit" on multiple occasions in his request letter. For instance, on pages 2 and 3 respectively, (in bold, blocked and italicized letters), the director states:

PLEASE SUBMIT MORE *SPECIFIC* EVIDENCE TO DEMONSTRATE THAT THE GRANTING OF THE BENEFICIARY'S WAIVER REQUEST...WOULD HAVE A SIGNIFICANT IMPACT ON [THE PETITIONER'S] AREA OF EXPERTISE -- ON A NATIONAL LEVEL...

*

*

*

Please provide the Service with Independent Advisory Opinions regarding the petitioner's...qualifications being of **substantial intrinsic merit** and **in the national interest**...

The director's request for evidence contained three full pages of substantive language. We find that the petitioner was given clear notice by the director of the deficiencies in the petition.

The petitioner also states the following as his reason for appeal:

Because the Service's decision ignored the preponderance of the evidence that I submitted to demonstrate my proposed work would be national in scope and the effect of my proposed work would benefit the national interest in a substantial[ly] greater degree than an U.S. worker having the same minimum qualification, the Service's [now Bureau's] decision must be overturned.

The petitioner points to three international lawsuits that he has handled as evidence that his work is national in scope. The petitioner claims that the "outcome of the cases will affect battery sales in the nation, trade secret protection in the nation's fiber optic component manufacturing sector, polymer and intraocular lenses sale in the nation." The petitioner states that he represents clients in several states and countries. While we acknowledge that the petitioner practices in multiple jurisdictions and is involved in multi-state litigation, it is important to note that the petitioner's specific individual efforts primarily serve the interests of his law firm and their clients. Nevertheless, as the outcome of his particular cases could conceivably impact consumers nationwide, we find that the potential benefit of his work is national in scope.

The intrinsic merit and national scope of the petitioner's work are only two prongs 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. To make such a showing the petitioner must demonstrate that, as an individual, he has demonstrated significant influence within his profession and that his past record demonstrates an ability to serve the national interest to a greater extent than other international litigation attorneys. While the petitioner may have benefited various clients through his work, such success does not persuasively distinguish the petitioner from others in his field or specialty. The performance of legal services for a given client is of interest mainly to that particular client.

The petitioner argues that his role as lead counsel in international lawsuits shows the significant role he has played in his past work and that his proposed employment will serve the national interest to a greater degree than an available U.S. worker having the same minimum qualifications. However, 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. It is not sufficient for the petitioner to simply list the cases in which he has been involved. Instead, he must demonstrate that his individual contribution has had a disproportionately greater effect in the international litigation community, as compared with the efforts of other international litigation attorneys. The petitioner has not made such a showing.

We are also not persuaded by the argument that the approval of the national interest waiver is important for the continuance of legal services to the petitioner's clients and that any sudden change may cause negative results for their business or families. As the petitioner and his witnesses have stated repeatedly, the petitioner is licensed to practice in both the United States and China. The firm that the petitioner currently works for is one of the largest firms in China, and has united with Law and Partners, Attorneys at Law and former King and Wood LLP in the U.S. in 2001. As such, there is no indication that a denial of the petition would result in harm to the petitioner's clients, much less affect the national interest to such a degree that a waiver of the labor certification requirement would be appropriate. The labor certification process protects workers in the United States, and only when it is in the national interest to do so will that requirement be waived.

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.