U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: EAC 01 224 56642 Office: VERMONT SERVICE CENTER Date: MAR 17 2003

IN RE: Petitioner: [redacted]
Beneficiary:

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:

[redacted]

PUBLIC COPY

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, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary 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, a telecommunications company, seeks to employ the beneficiary as a systems engineer. 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 beneficiary 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 beneficiary 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 indicates that the beneficiary is responsible for "daily maintenance of all fiber optics and satellite circuits." Counsel describes the petitioner, the beneficiary's role for the company, and the claimed justification for the national interest waiver:

> [The petitioner] . . . is a specialized service provider for telecommunications between the U.S. and Africa and the Middle East. Established in 1996, [the petitioner] has grown exponentially and is competing now with major carriers MCI and AT&T. . . .
>
> The importance of competitive international telecommunications companies such as [the petitioner] cannot be overestimated in this era of high-tech communications and competitive pricing. . . .
>
> Obviously the American consumer benefits greatly from telecommunications competition and advanced technology. . . .
>
> [The petitioner] is committed to becoming a major direct supplier of telecommunications products and services in the world. . . . Through the use of International Gateway, [the petitioner] will eliminate Europe as the middle agent and route calls from Africa and the Middle East directly to the United States. The elimination of the intermediary will result in discounted calling costs to the foreign

> country, higher revenues to the U.S. economy and the stimulation of demand and dependency upon the U.S. by Africa and the Middle East for such products and services now being realized and awarded in Europe. . . .
>
> As systems engineer, [the beneficiary] is responsible for providing planning, diagramming, implementation and provisioning of voice and data circuits as well as daily maintenance of all of [the petitioner's] fiber optic and satellite circuits. . . .
>
> [The beneficiary] was instrumental in obtaining lucrative and long-term contractual agreements for [the petitioner] through his negotiation skills and knowledge of the telecommunications industry. This aspect more than any may sufficiently provide him with a favorable waiver in the national interest.

The initial filing contained no documentation to support counsel's main arguments. The only documents submitted with the petition are the beneficiary's resume (which constitutes a series of claims rather than evidence to support those claims), the beneficiary's business card, and copies of newspaper articles about the telecommunications industry (these articles mention neither the beneficiary nor the petitioner). The initial filing did not even include the required documentation of the beneficiary's advanced degree, as required by 8 C.F.R. § 204.5(k)(3)(i), although the petitioner has since provided this evidence.

The director requested further evidence that the petitioner has met the guidelines published in *Matter of New York State Dept. of Transportation*. The director observed that the beneficiary does not serve the national interest merely by enabling the petitioner to compete more effectively against rival U.S. telecommunications firms. In response, the petitioner has submitted letters and other documents, including a promotional packet prepared by the petitioner.

One unsigned letter states that the beneficiary "is a vital link to a various array of customers," and that the beneficiary assisted in laying an underwater cable from Amsterdam to New York and Virginia. Counsel states "[t]his is an amazing event, equal in scope to the first cross Atlantic cable or building of the Brooklyn Bridge!" The record contains no objective, third-party evidence to show that the petitioner's laying of this cable was considered an event of equal magnitude to the milestones described by counsel. Having already submitted numerous newspaper articles about other telecommunications companies (which, from the descriptions offered, are in some cases hundreds of times larger than the petitioning company), the petitioner has not shown that the petitioner's laying of this transatlantic cable attracted any media attention at all, which would be expected if it was indeed as significant as the construction of the Brooklyn Bridge or the laying of the first transoceanic telegraph cable in the 19th century.

Counsel states that the letter described above is "from the petitioner," but in fact an inscription at the top of the page states that it is "from [the beneficiary]," indicating that the beneficiary himself is the author of the statement. The beneficiary's own assessment of his importance has negligible weight in this proceeding.

A. Benmoussa of Maroc Telecom states that the beneficiary supervised "the interconnection tests in order to open a voice & data relation between Morocco and USA" and "was our contact point for any matter regarding the operation and maintenance of the relation. [redacted] executive chairman of United Business Systems, Ghana, Ltd., states that the beneficiary was the "contact engineer" during the implementation of "a VSAT and VOIP service" with the petitioner. [redacted] states that the beneficiary "was responsible for the plan, diagram and implementation of the Voice and Data circuits as well as for the provisioning of the aforementioned circuits." An untranslated letter in French, addressed to the beneficiary, from [redacted] of the *Societe Centrafricaine des Telecommunications* presumably contains similar information.

Counsel states that the petitioner's contracts with overseas telecommunications companies "are worth millions of dollars and the economic value provided to [the petitioner's] investors and financial deposits is clearly national, not local, in scope." While the beneficiary is the individual who, in fact, served as the liaison during the execution of these contracts, there is no indication that these contracts would not have been executed if a different individual had served in the beneficiary's place. Furthermore, even if the petitioner had not secured these contracts, there is no indication that these contracts would have gone overseas rather than to other U.S. companies, considering that the evident goal of the contracts was to establish telecommunications links with the United States.

The director denied the petition, acknowledging the intrinsic merit of the beneficiary's work but finding that the petitioner's own contribution lacks national scope and does not warrant a waiver of the job offer requirement that, by law, attaches to the classification that the petitioner chose to seek.

On appeal, counsel states that the beneficiary's "position has an impact on the national economy which in turn will be affected by the hiring of" the beneficiary. To the extent that telecommunications are increasingly global and interconnected in nature, the argument could be made that the beneficiary's work is national in scope. At the same time, however, the evidence presented does not show that the beneficiary's contribution to the economy has been, or is likely to be, more significant than the contributions made by countless other individuals engaged in international business transactions.

Counsel states "[t]he director framed its position in this case in the negative, stating '*it would be contrary to the national interest to potentially deprive the prospective employer of the services of the alien by making the position available to U.S. workers*.' This conclusion is not a correct interpretation of case law nor does it make rational sense." The quoted passage derives verbatim from *Matter of New York State Dept. of Transportation*, and counsel does not explain how a direct quotation from a binding precedent decision can be contrary to case law. The full sentence reads "[t]he petitioner must demonstrate that it would be contrary to the national interest to potentially deprive the prospective employer of the services of the alien by making available to U.S. workers the position sought by the alien." In other words, the petitioner must demonstrate not only that the beneficiary fulfills important duties, but also that it is in the national interest that the beneficiary, rather than a qualified U.S. worker, perform those duties.

Counsel initially indicated that a brief would be forthcoming within 30 days. Subsequently, however, counsel had indicated that the brief will not be submitted. Therefore, the record of proceeding is complete as it now stands.

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.