

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
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Washington, D.C. 20536

File: [REDACTED] WAC 01 217 53946 Office: CALIFORNIA SERVICE CENTER

Date:

MAR 19 2003

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: SELF-REPRESENTED

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, 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 assistant professor in management science. 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 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.

(ii) Physicians working in shortage areas or veterans facilities.

The petitioner obtained a Ph.D. in industrial engineering in 1990 from the University of Oklahoma. The beneficiary's occupation, teaching, falls within the pertinent statutory definition 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 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 pertinent 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 U.S. worker having the same minimum qualifications.

It is apparent that teaching university level courses in management science is an area of substantial intrinsic merit. The petitioner contends that the benefit of his proposed employment as a college educator is also national in scope, but offers no specific argument to support this assertion. On appeal, he concedes that the benefits of his work are felt more in California where he is currently teaching at California State University-Northridge. *Matter of New York State Dept. of Transportation, supra*, states that "while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement." *Id.* at 217, n.3. The petitioner has not established that his duties as a college instructor would have any greater national impact than any schoolteacher whose influence is limited to the local geographic area. The petitioner cannot thus establish that a waiver of the job offer requirement is warranted.

The remaining issue discussed by the director is whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner would merit the special benefit of a national interest waiver, over and above the visa classification he seeks. On appeal, the petitioner submits a newspaper article discussing the need for well-trained teachers in the United States. Eligibility for the waiver, however, must rest with the alien's own qualifications rather than with the position sought. The argument that a given project or occupation is so important that any alien qualified to work in the area must also qualify for a national interest waiver is generally not accepted. Similarly, a shortage of qualified workers in a given field, regardless of the nature of the occupation, does not constitute grounds for a national interest waiver. Given that the labor certification process was designed to address the issue of worker shortages, a shortage of qualified workers supports the argument for obtaining rather than

waiving a labor certification. By seeking an extra benefit to waive the labor certification procedure, the petitioner also assumes an extra burden of proof. The petitioner must show that he has a past record of accomplishment with some degree of influence on the field as a whole. *Id.* at 219, n.6.

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.

Together with copies of published articles, personnel evaluations, and documentation of solicitation for manuscript reviews, the petitioner submits several witness letters. [REDACTED] a professor at the University of Oklahoma, indicates that he was on the petitioner's doctoral dissertation committee and praises the petitioner's forceful and persuasive manner. [REDACTED] a professor at California Polytechnic State University, states that he and the petitioner worked on numerous papers for different conferences. [REDACTED] praises the petitioner's research and teaching abilities, characterizing the petitioner as an instructor who gives his students top priority. [REDACTED] another professor at California Polytechnic State University, indicates that he has known the petitioner for the past eight years and that they share a common academic interest in systems analysis for engineering applications. [REDACTED] states:

In 1994, I co-authored a scientific paper with [the petitioner] entitled "Optimization of the Stress Concentration Around Notched Carbon fiber/Epoxy Composite Materials", [sic] that was presented and published in the proceedings of the 26th International SAMPE Technical Conference, Atlanta, Georgia, October 17, 1994. I was very much impressed with [the petitioner's] extraordinary skills in Systems Analysis and operations research . . . I made some notation changes to the spread sheet application developed by [the petitioner] and started using it in my course: Systems Analysis for Civil Engineers.

The petitioner also submits several endorsements from professors at California State University-Northridge. [REDACTED] confirms that the management science department recognized the petitioner as a "highly effective" teacher. [REDACTED] states:

In addition to [the petitioner's] teaching and research responsibilities, [the petitioner] served on several committees in the Department and [the petitioner] is currently the Department's representative on the College Graduate Committee.

* * *

The research program [the petitioner] is leading in Reliability Optimization and Managerial Decision Support methods is promising to the Industries of composite

materials and heavy equipment manufacturing.

██████████ the chair of the petitioner's department at California State University-Northridge, confirms that the petitioner has twice won the school's "Polished Apple" award for excellence in teaching, and that he is a strong candidate for a tenure-track position in the management science department.

Two letters and a memorandum from ██████████ and ██████████ ██████████ faculty members at California State University-Northridge, also confirm that the petitioner is highly regarded as a teacher and recommend his retention as a second year probationary faculty member.

All of the petitioner's witnesses are past or present mentors, collaborators or colleagues. Letters from those with direct ties to the petitioner certainly have value, because such persons have direct knowledge of the petitioner's skills, but they cannot by themselves establish the petitioner's influence over the field as a whole.

As noted above, the petitioner's evidence includes documentation of teaching awards he has received such as the 2001 "Blue Key Award" in recognition of his teaching skills at California State University-Northridge. Recognition of achievements by one's peers is one possible requirement for aliens of exceptional ability, a classification that normally requires a labor certification as set forth in 8 C.F.R. § 204.5(k)(3)(ii) enumerating the criteria for an alien of exceptional ability. We cannot conclude that satisfying one requirement or even the requisite three requirements for this classification makes one eligible for a waiver of the labor certification process.

In this case, the petitioner has also submitted copies of two papers presented at technical conferences in which he was a lead author, eight papers presented at technical conferences in which he was a co-author, and a copy of one published journal article. The record contains nothing showing that the presentation or publication of one's work is rare in an academic career.

When judging the influence and impact that the petitioner's work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon the petitioner's findings. Frequent citation by independent researchers, on the other hand, would demonstrate more widespread interest in, and reliance on, the petitioner's work. Here, the record contains no evidence that independent researchers have cited the petitioner's written work. As noted previously, with the exception of ██████████ comment that he made notational changes to the petitioner's spreadsheet and used it in one of his courses, there is no indication that any of the petitioner's teaching methods have been widely adopted by others in the field.

It is apparent that the petitioner is a skilled college educator. Nevertheless, his superior ability is not by itself sufficient cause for a national interest waiver. The benefit that the petitioner presents to his field of endeavor must greatly exceed the "achievements and significant

contributions” contemplated in 8 C.F.R. 204.5(k)(3)(ii)(F) for an alien of exceptional ability. It is not sufficient to state that the alien possesses unique credentials or an impressive background. The labor certification process exists because protecting jobs and employment opportunities of U.S. workers having the same objective minimum qualifications as an alien seeking employment is in the national interest. The alien seeking an exemption from this process must present a national benefit so great as to outweigh the national interest inherent in the labor certification process. In this case, we cannot conclude from the witness letters and other evidence of the petitioner’s work that this petitioner’s contributions have been of such unusual significance that the petitioner merits the special benefit of a national interest waiver, or that he has already influenced his field to any significant degree.

As is clear from the plain wording of the statute, it is 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 the national interest. Similarly, 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. Based on the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification would 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. In this case, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.