U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

B5

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: [redacted] Office: Texas Service Center Date: MAR 19 2003

IN RE: Petitioner:
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

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, Texas 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 or an alien of exceptional ability (the petitioner has not specified which classification he seeks). The petitioner seeks employment as wool broker and consultant. According to his resume, at the time of filing the petition, he was the president of Tradenor, Inc., an import/export company that he established in Miami, Florida. 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 petitioner does not qualify for classification as a member of the professions holding an advanced degree, and 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) Subject to clause (ii), 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.
> > >
> > > (ii) Physicians working in shortage areas or veterans facilities.

The first issue to be determined is whether the petitioner qualifies as member of the professions holding an advanced degree, and/or an alien of exceptional ability. The director's decision only partly addressed this issue, stating that the record did not contain evidence that the petitioner holds an advanced degree. The petitioner in this case has not specified which of the two classifications he seeks.

The regulation at 8 C.F.R. § 204.5(k)(2) states, in pertinent part:

Advanced degree means any United States academic or professional degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree.

Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as an occupation for which a United States Baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.

The petitioner has offered no evidence showing that he holds a master's degree or baccalaureate degree. According to his resume, the petitioner's highest level of formal education was that of a high school diploma. The petitioner has also failed to show that his occupation requires, at a minimum, a baccalaureate degree. Therefore, the petitioner cannot be considered to be a member of the professions holding an advanced degree.

Because the petitioner is not an advanced-degree professional, the petitioner cannot receive a visa under section 203(b)(2) of the Act unless he qualifies as an alien of exceptional ability. The regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth six criteria, at least three of which an alien must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business. These criteria follow below.

We note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered." Therefore, evidence submitted to establish exceptional ability must somehow place the alien above others in the field in order to fulfill the criteria below; qualifications possessed by every member of a given field cannot demonstrate "a degree of expertise significantly above that ordinarily encountered." For example, every physician has a college degree and a license or certification; but it defies logic to claim that every physician therefore shows "exceptional" traits.

An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability.

The petitioner submitted no evidence to satisfy this criterion.

Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought.

The letters provided in support of the petition satisfy this criterion.

A license to practice the profession or certification for a particular profession or occupation.

Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability.

Evidence of membership in professional associations.

The record contains no evidence to satisfy the above three criteria.

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

The petitioner submitted letters from the petitioner's direct business contacts describing their relationship with the petitioner and his competence in the wool industry. The record, however, does not reflect that the petitioner has earned any formal recognition for his work. The letters provided represent, in essence, private communications to the U.S. Immigration and Naturalization Service (now the Bureau) rather than open recognition of the petitioner's work, and they came into existence not because of the petitioner's achievements, but because the petitioner solicited the letters to support his immigration petition. Furthermore, the letters do not demonstrate specific significant contributions or achievements; they merely attest in general terms to the petitioner's skills as a wool broker and consultant. A general reputation as a competent and experienced wool broker does not constitute *prima facie* evidence of exceptional ability in business.

For the reasons discussed above, the petitioner has not adequately established eligibility for classification either as an advanced degree professional or as an alien of exceptional ability. The remaining issue of whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest is moot, because the petitioner is ineligible under the classification sought. Nevertheless, the issue will be discussed because it was central to the director's decision.

Neither the statute nor 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 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.

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 field is so important that any alien qualified to work in that field 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 sought. 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 note 6.

The application for the national interest waiver cannot be approved. The regulation at 8 C.F.R. § 204.5(k)(4)(ii) states, in pertinent part, "[t]o apply for the [national interest] exemption the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate." The record does not contain this document, and therefore, by regulation, the petitioner cannot be considered for a waiver of the job offer requirement. The director, however, does not appear to have informed the petitioner of this critical omission. Below, we shall consider the merits of the petitioner's national interest claim.

In denying the petition, the director stated that the petitioner had not met any of the three prongs of the national interest test outlined in *Matter of New York State Dept. of Transportation*. We must, therefore, determine whether the evidence of record supports this conclusion.

Several letters from the petitioner's international business contacts accompanied the petition. Many of these letters offered little information other than verifying the petitioner's years of work experience or indicating that he has a business relationship with a particular company. For example [redacted] Director [redacted] and Import Company, Montevideo, Uruguay, states:

> We hereby certify that [the petitioner] is connected with this company since 1984 as an Independent Broker for the sale of our Scoured Wools, Wool Tops and Wool Wastes to

several markets such as England, other European continental countries, Japan and the U.S.A.

At present we maintain our business relationship hoping to improve our sales into the U.S.A. market through [the petitioner's] new firm "Tradenor, Inc." of the U.S.A.

[redacted] is a U.S. wool broker. He states:

This is to certify that [the petitioner] has been known by me since 1983. I have been acting as an agent representing him for the sale of his wool products from Argentina and Uruguay to wool dealers and firms in the United States.

I also represent his U.S. based company "Tradenor, Inc." for the same purpose. He is a capable wool man with experience in grease and scoured wools, wool tops, noils and all types of wool waste. He has an excellent business reputation...

The letters provided by the petitioner show that the petitioner is a knowledgeable wool broker who has earned the respect of his business contacts and enjoys success as a small business owner in the United States. However, it has not been shown that the petitioner's work has impacted the wool industry beyond the business transactions that he has conducted for his individual clients. The petitioner has offered no independent financial statistics from the business media or authorities such as the U.S. Department of Commerce or U.S. Department of Agriculture to show that his company commands a greater market share or has been significantly more successful than other export businesses in penetrating foreign markets. Nor has the petitioner shown that his company provides a service of intrinsically greater significance than that of other U.S. importers or exporters.

The petitioner engages in what is, inherently, an international endeavor involving yearly sales of perhaps a few million dollars. The petitioner, like any other business owner, plays a significant role in directing the activities of his company. The statute, however, does not automatically qualify business owners for the national interest waiver, and the petitioner does not establish the relative importance of his activities simply by describing them. By law, advance degree professionals and aliens of exceptional ability are generally required to have a job offer and a labor certification. With regard to Congressional intent, a statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d 1289, 1295 (5th Cir. 1987). Congress plainly intends the national interest waiver to be the exception rather than the rule.

The director requested further evidence that the petitioner had met the guidelines published in *Matter of New York State Department of Transportation*. In response, the petitioner submitted additional witness letters.

[redacted] Vice President of Finance, L.W. Packard & Company, a U.S. clothing manufacturer, states:

> procures wool, cashmere, camel hair and other fibers throughout the world via various companies and agents. [The petitioner] is one of these very knowledgeable and competent suppliers. He offers a wide range of products at very competitive prices. I hope [the petitioner] continues offering us wool and wool noils in the future, as I know he will help us continue to offer competitively priced products to the United States market.

President, Chargeurs Wool, a U.S. wool supplier, states that his company is a leader in the industry with yearly sales of $50 million. He further states:

> This letter is to certify that our company has had an extremely fruitful business relationship for over 21 years with [the petitioner], a wool expert with great international knowledge.
>
> [The petitoner] has helped us develop new markets for our wool products manufactured in our combing mill in Jamestown, South Carolina, many times. He has been able to create demand for our American products in the U.K., Mexico, Italy and other European countries, as well as providing us with new contacts in the American market.

letter does not indicate the percentage of his company's sales that are specifically attributable to the petitioner. We accept that the petitioner played a role in facilitating a portion of Chargeurs' sales. However, the nature of the petitioner's job is to ensure that such sales are conducted; simply being a competent international wool broker cannot suffice to demonstrate eligibility for a national interest waiver. We find it reasonable to conclude that the vast majority of Chargeurs' domestic and foreign sales would have occurred regardless of the petitioner's individual involvement. It could also be concluded that, absent the petitioner's involvement, the company would have simply enlisted the services of another broker (such as to facilitate many of its foreign and domestic business transactions.

The petitioner's witnesses have not explained how contributing to the success of one's own business and its clients constitutes a significant contribution to the field or industry, beyond what would normally be expected of a company owner providing importing and exporting services. Letters from the petitioner's clients assert that the petitioner has allowed their companies to establish a greater presence in global markets, but the letters do not indicate what level of benefit can be ascribed specifically to the petitioner as opposed to overall global economic trends.

letter states that "there are practically no wool experts in the U.S.A." Pursuant to *Matter of New York State Dept. of Transportation*, 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 is an argument for obtaining rather than waiving a labor certification.

The Service acknowledges that there are certain occupations wherein individuals are essentially self-employed, and thus would have no U.S. employer to apply for a labor certification. While

this fact will be given due consideration in appropriate cases, the inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner must still demonstrate that the self-employed alien will serve the national interest to a substantially greater degree than do others in the same field.

The director denied the petition, stating that the petitioner failed to establish that a waiver of the requirement of an approved labor certification would be in the national interest of the United States.

While the director stated that the petitioner's work is devoid of intrinsic merit, we withdraw this finding. International trade in the wool business does have importance to U.S. agricultural and textile industries. Further, the U.S. economy most certainly benefits from foreign trade. We find, therefore, that the petitioner's work has substantial intrinsic merit. Nevertheless, a finding of substantial intrinsic merit in no way implies a finding of national scope, or that a waiver of the job offer requirement would serve the national interest.

On appeal, the petitioner reiterates his work experience and states that the letters provided in support of the petition establish that his work benefits the American market and U.S. consumers.

The petitioner, however, has failed to take into account the scale of his contribution. For example, a company that exports $100 worth of goods is, in a small way, contributing to the economy and improving the balance of trade, but the effect of this $100 is negligible at a national scale. The petitioner has offered no evidence from business publications or governmental agencies showing that U.S. foreign trade in wool has shifted discernibly as a result of the petitioner's individual efforts, and therefore his argument regarding his impact on the national economy is weak. While the petitioner's involvement in increasing U.S. exports has arguably been of some economic benefit to the U.S., promoting such exports is a routine duty for the president of a company conducting international business. The nature of the petitioner's work for Tradenor, Inc. is to ensure that his suppliers' products are sold in the U.S. or overseas; simply being a competent wool broker cannot suffice to demonstrate eligibility for a national interest waiver.

The petitioner's ability to impact the industry beyond the companies that he directly serves has not been demonstrated. The handling of importing and exporting services for a given client is of interest mainly to that particular client. The scope of the petitioner's business, therefore, appears limited to those businesses that he directly serves, rather than being national.

We do not dispute the witnesses' assertions that the petitioner is a knowledgeable wool broker and that he has successfully marketed U.S. products in foreign markets. The petitioner, however, has not shown that his work has attracted attention beyond those companies directly utilizing his import/export services. While the U.S. does have an economic interest in expanding exports, the petitioner has not shown that global markets were largely impenetrable to U.S. exporters in the wool industry (rather than just some of the petitioner's immediate suppliers) prior to the petitioner's involvement.

In this matter, the petitioner has not shown that his business accomplishments are of demonstrably greater value than the achievements of other company owners/presidents whose companies are also engaged in international trade. The available evidence does not persuasively demonstrate that the petitioner's past record of achievement is at a level that would justify a waiver of the job offer requirement that, by law, normally attaches to the visa classification sought by the petitioner.

In sum, the petitioner has not established that he qualifies for the underlying immigrant classification, or the added benefit of the national interest waiver.

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.

ORDER: The appeal is dismissed.