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

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

**PUBLIC COPY**



**MAR 24 2003**

File: EAC 01 223 50335 Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner:  
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: SELF-REPRESENTED

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

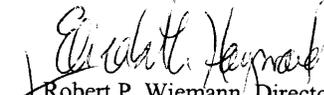
INSTRUCTIONS:

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 (AAO) 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 instructor and tutor, teaching electrical engineering. 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 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 petitioner, who claims an M.S. degree in Electrical Engineering from the University of South Florida, qualifies as a member of the professions holding an advanced degree. We note that the record does not unambiguously establish that the petitioner holds a master's degree. The petitioner has submitted a copy of a diploma, dated August 9, 1991, from the University of South Florida, and a form letter dated January 3, 1992, refers to the petitioner as "a graduate from the College of Engineering at the University of South Florida." The record also, however, includes a subsequent letter dated September 24, 1992 from Arthur David Snider, Graduate Program coordinator at the University of South Florida, who states "[a]cademically speaking he has met and exceeded our standards for the MS degree; its final awardence [sic] has been delayed, pending the resolution of some administrative issues." The record shows that, in 1992, the petitioner attempted to enter a doctoral program at Drexel University, but was unable to complete his application because the University of South Florida would not provide an official

transcript. The petitioner indicates that he “was not able to get the transcript because of a debt.” Given the above evidence, we cannot conclusively determine that the University of South Florida actually conferred the master’s degree upon the petitioner.

The sole issue raised in the director’s decision 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 states that he qualifies for a national interest waiver because he has frequently volunteered his services as a tutor. The petitioner asserts that “justice and humanitarianism are in the national interest for America’s soul,” and the petitioner states that “evoking the Universal Human Rights Declaration rooted in the American spirit should be a ground for my petition.” The petitioner continues:

Americans speak out loudly and take bold actions in support of basic human rights, and animal rights, nationally, and globally; that's a very admirable spirit; but I have been deeply troubled; why my basic human rights have not mattered to any, even though I have been in their own backyards for so long. . . .

Because this is a unique case . . . I request taking any materials into consideration if they help my case; otherwise, please do not consider any materials that [are] against my case.

We cannot, of course, honor the petitioner's request that we disregard any evidence that is unfavorable to his claim. The AAO, like the director, must regard the record as a whole and cannot approve any petition when the totality of the evidence does not support such an approval.

The petitioner asserts "there had been thousands of illegal aliens who broke laws at a criminal level and got the American citizenship," the evident implication being that the petitioner is more worthy of permanent residence, and ultimately citizenship, than those individuals.

The petitioner submits several witness letters containing praise for the petitioner's teaching abilities. The witnesses include some of the petitioner's former professors, students, and employers. A representative example of these letters is from Reginald Audrick, president of R.A. Educational Services, who states:

[The petitioner] has been working for R.A. Educational Services for about three years. He has been a very capable and diligent worker and donates so much extra time, and effort to students voluntarily. His commitment to the advancement of the students has been his top motivation and priority. I'm extremely fortunate to have him as a part of our company. [The petitioner] is a unique individual who, with an advanced degree, has answered a noble call that has cost him materially by opting to tutor from semester to semester in complex areas of science and math.

Other letters, dating back to the late 1980s, are general reference letters of the kind routinely issued to former students and employees.

The letters attest to the petitioner's competence and dedication. The issue in this proceeding is not whether the petitioner is qualified to work in his field – plainly he is qualified. But the petitioner seeks an employment-based immigrant classification that normally, by law, requires a job offer and thus a labor certification. To obtain an exemption from this job offer requirement, the petitioner must show that his admission is in the national interest of the United States. From the construction of the statute, it is plain that one does not serve the national interest merely by virtue of being an alien of exceptional ability, or a member of the professions holding an advanced degree.

The petitioner submits copies of documents relating to his application for suspension of deportation. According to these documents, the petitioner was placed in deportation proceedings in 1988, for having overstayed his nonimmigrant visa. The petitioner arrived in the United States in June 1983 and has been in the U.S. ever since that time. The proceedings described in these documents represent a separate administrative matter. The petitioner's legal difficulties in this regard do not cause his admission to be in the national interest. The petitioner's repeated references to basic human rights underscore the petitioner's view of his situation, but neither the national interest waiver, nor permanent resident status, are human rights. They are privileges and benefits conferred by the government upon a showing of eligibility. The petitioner's difficulties in one immigration proceeding do not in any way entitle him to benefits or favorable consideration in a different proceeding such as the matter at hand, even if the petitioner had submitted official court documents rather than relying entirely on his own possibly self-serving interpretation of the case.

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 has stated "[t]his is a unique case that deserves to be treated that way." The petitioner has not explained what it is that makes his case "unique." The petitioner appears to be referring to his ongoing efforts to fight the deportation proceedings instituted against him in 1988. The petitioner submits a statement in free verse, observing that "we are all made of the same atoms born far away / Long time ago in stars" and that we "all are temporary residents on this planet." The petitioner asserts that he, "an Egyptian who dared to dream the American dream," has been denied justice, and asks the Service (now the Bureau) to "embrace Logic, compassion, and justice in my case / And apply the law with overdue deserved mercy and leniency." In a separate statement, the petitioner states that the terrorist attacks of September 11, 2001 have created "a hostile and suspicious atmosphere" which made it impossible for him "to accommodate the INS's demands." (The director's request for information was issued on September 26, 2001, only weeks after the attacks.) While the petitioner may be correct that the events of September 11, 2001, led to an unwarranted backlash of anti-Arab and anti-Muslim sentiment, usually directed against innocent people, there is no indication in the record that the petitioner would have been able to demonstrate his eligibility had the attacks not taken place.

The petitioner states that his "struggle for JUSTICE with the INS to adjust my status for years should have been a reasonable factor, and an indispensable consideration, in this case, in reviewing my I-140 national interest waiver petition." While a waiver would unquestionably be in the petitioner's interest, that is not the issue here. The benefit that the petitioner seeks is not based on humanitarian concerns. Rather, it is an employment-based immigrant petition, in which the alien must benefit the United States through his employment activities.

The petitioner has not shown that his years of legal troubles have put him in a position to be of special benefit to the United States. Instead, the petitioner's basic argument appears to be that the United States owes him a waiver, to compensate him for the hardships he has endured as a result of efforts to deport him after his visa expired. The deportation proceedings were initiated as a result of the petitioner's uncontested violation of immigration law. The petitioner's decision to devote over a decade to resisting the consequences of that violation does not mean that it is now in the national interest to waive the job offer requirement.

More significantly for the petitioner, we note that a national interest waiver applies only at the visa petition stage, not the adjustment stage. Assuming the petitioner were to receive a national interest waiver, the approved immigrant petition would not guarantee that he would become a lawful permanent resident. The petitioner would still have to apply for adjustment of status (or for an immigrant visa if overseas), and demonstrate that he is admissible as an immigrant. A national interest waiver waives only the job offer requirement; it is not by any means a waiver of grounds of inadmissibility.

The petitioner submits a petition circulated on his behalf, bearing 22 signatures, in support of his efforts to immigrate. A cover letter accompanying the petition indicates that the petitioner now works as a landscaper at a church. The petitioner also submits copies of previously submitted letters attesting to his abilities as a tutor. Working as a tutor, as a volunteer or otherwise, is not grounds for automatic approval of a waiver, and the evidence that actually pertains to his tutoring work does not show that the petitioner stands out from other tutors to such an extent that the special benefit of a national interest waiver would be warranted.

The director denied the petition, observing that that much of the petitioner's evidence and arguments are not relevant to the question of the petitioner's eligibility for a national interest waiver. The director found that the petitioner has not shown that, as a tutor, the petitioner's admission would be in the national interest.

On appeal, the petitioner again offers various arguments and assertions regarding justice, freedom, oppression, and fairness. We have already addressed the petitioner's earlier arguments in this regard, and will only reiterate here that the national interest waiver is not a humanitarian benefit.

The petitioner also offers arguments more germane to the employment-based nature of the waiver. The petitioner asserts that he has a demonstrated track record as a tutor. The petitioner's tutoring work has a direct impact only on those individual students whom he tutors, and is highly attenuated at the national level. *See Matter of New York State Dept. of Transportation, supra*, at 217 n.3. The petitioner adds that private tutoring is not readily amenable to labor certification. The unavailability of labor certification, however, is only one factor for consideration rather than *prima facie* evidence of eligibility for the waiver. The wording of the statute clearly indicates that the immigrant classification is intended primarily for aliens with job offers, rather than self-employed aliens.

The petitioner adds that he could also "help US manufacturers (in the electronic industry) to improve the profitability in the Arabic/Islamic worlds." The petitioner admits he has not yet done this, but asserts that he would likely be successful given his background. This assertion is entirely speculative, and the petitioner has not even demonstrated that manufacturers have expressed any interest in utilizing the petitioner's services in this way.

Whatever the petitioner's future plans may be, the evidence of record does not show that the petitioner's work as a tutor has had a measurably greater impact than that of other tutors in the field, and there exists no blanket waiver for tutors in general.

In a subsequent submission, the petitioner submits quotations from 17<sup>th</sup> century philosopher John Locke's *An Essay Concerning the True Original, Extent, and End of Civil Government*. Locke asserts that there is a "law of nature" which antedates and supersedes laws made by society. Works of philosophy, however persuasively written, do not have the force of law. Furthermore, many of Locke's arguments are theologically based and thus clearly lie outside of the jurisdiction of any government body.

The petitioner relates an incident in which he "was shuffled [and] dragged to the street because I tried to apply for a simple piece of identification." The petitioner asserts that his "birth rights have been violated in every possible way that is against the core principles of America." As with the earlier court proceedings, we have only the petitioner's own account of what occurred, and this account may be biased by the petitioner's stated belief that continued residence in the United States is a "birth right" rather than a benefit for which he must prove his eligibility. The petitioner's latest submission contains no substantive materials relating to the waiver claim.

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.