

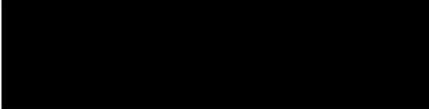
U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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invasion of personal privacy**

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



File: WAC 01 284 51181 Office: CALIFORNIA SERVICE CENTER

Date: MAY 7 2003

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:



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 a junior architect at Linane/Drews Architects, Burbank, California. 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 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 intrinsic merit of architecture is self-evident, and the occupation is at least potentially national in scope. At issue is whether the petitioner’s work and contributions as an architect are so significant that her admission serve the national interest to an extent that justifies a waiver of the job offer/labor certification requirement.

In a statement submitted with the initial filing, the petitioner states:

As an architect in the process [of] gaining my professional license, I view my profession as one of the best professions that can affect and inspire culture and human behavior. . . .

It is one of the highest national interests for all our architects to provide valuable insight into high technological, social, cultural, and artistic developments, which, while happening right under our noses, are blurred by an ever-accelerating world of our own creation. . . .

As a designer and architect, I always view the humanity part (the relationship between human and the architecture and its surrounding landscape) as the first priority in my project. . . .

To me, the clients are not only paying for the project, they are paying for their daily lives inside that project. . . . [I]t is my responsibility to provide a harmonious environment to the people, while let[ting] the entire requirement from the client . . . fit precisely.

Along with background documentation pertaining to the petitioner’s education and past projects, and samples of the petitioner’s writings and designs, the petitioner submits several witness letters.

██████████ principal of RoTo Architects, Inc., was formerly the director of the Southern California Institute of Architecture while the petitioner was a graduate student there. Mr. ██████████ describes the petitioner as “a committed, hardworking student whose work was of keen interest to her colleagues and faculty. . . . She engaged others and her work with good nature, positive attitude and intelligence. In short, she contributed. I believe she has the strong will to succeed and the compassion to do the right thing for the community.” While complimentary, this letter does not demonstrate that the petitioner’s work is of greater importance than that of other qualified architects.

██████████ senior manager and associate of F+A Architects, states:

I am currently the Project Director for a 600,000 square foot facility that will house indoor snow boarding, wave surfing, ski diving, rock climbing, ice skating and skate boarding along with dining, shopping facilities and fitness clubs; all under one roof. . . .

The type of work that I am involved in is unique and is at the leading edge of the architectural profession. It is this vantage point that has allowed me to seek and spot very unique, one of a kind individuals that can manage advanced design projects.

I met [the petitioner] in 1999 when she joined the Architectural firm of **F+A Architects** in Glendale, California. It was quite refreshing to see a young individual take new concept projects and develop them into reality. [The petitioner] possesses very unique design qualities that make her stand out. . . .

[The petitioner’s] interest in the humanistic aspects of architecture has taken her into areas seldom visited by other design professionals. She has recently been working in the design and development of a monument for the Italian American Task Force, the monument is called Unity Path and is in its most basic description, the celebration of the human spirit.

[The petitioner’s] concept for the monument design deals with a garden monument where the language of architecture is the binding element in the garden, where the fine art of architecture is an element in perfect harmony with its surroundings. . . .

The ultimate goal would be that of building the Garden Monument in several places across the country, thus becoming a cultural development continuously carried and updated by the designer.

██████████ manager of design development at the Disney Store, Inc., first met the petitioner when the two worked on “several tenant improvement and retail projects” for the firm of Oakes and Associates. Mr. ██████████ states that the petitioner’s work with the Italian American Task Force monument, discussed above, is “[o]f special note”:

In my opinion, the Monument project has important ramifications beyond the client and their families. The **public interest-at-large** greatly benefits from having this

safe haven, to gather and take part in community building activities. In this day [and] age with marked increases in school shootings and violence, we desperately need to build places to mend the damage caused by turbulent social forces. The success of the Monument project could be the catalyst for further regeneration throughout the country.

██████████ partner of Mendoza-Martinez Architects & Planners, is another former associate of F+A Architects. Mr. ██████████ discusses his collaboration with the petitioner on a “medical/wellness center,” stating “[s]eldom in my career have I worked with such a design sensitive talent as” the petitioner, who has a “refreshing design approach to projects like Wellness Centers and Monument projects that in essence strive as works of enduring significance.” Mr. ██████████ states that the petitioner’s “design is unique in that it is not simply putting program catalogs together. Instead, she always takes an artist’s approach to design, full of insight and resourcefulness.”

The above letters show that architects who have worked with the petitioner admire her artistic style of design, but they do not show that the petitioner’s work has had, or will have, an impact beyond the usual impact of a competent architect. ██████████ speculative assertion that the petitioner’s work can provide a place of solace and respite in a violent society is a conjecture, rather than a demonstrable observation of fact.

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 submitted further letters, information about firms where the petitioner and her witnesses have worked, and various other materials. Counsel states that the letters, from “various experts and outstanding persons in the field,” demonstrate that the petitioner’s “expertise and knowledge in the field of Architecture will advance the state of the art for architecture.”

Counsel states that the petitioner’s “most urgent project . . . is to continue the design of the ‘Education Park’” for the Los Angeles Unified School District (LAUSD). With regard to this project, Dr. ██████████ director of Instructional Technology Applications for LAUSD, states:

Through a citywide program called CEQA 2020 we are planning school construction out to 2020. . . . [The petitioner’s] design knowledge, skills and understanding of the cultural diversity we as Americans represent are unique while offering a fresh perspective and depth to the educational discourse of school reform coupled with school buildings we in the Core Staff are discussing. . . .

I designed and implemented a concept called Education Parks around the country. As President and Founder of Education Park Incorporated, we are beginning to build and consult on educational complexes nationwide that link schooling with urban poor communities. . . . This design is incorporated into CEQA 2020 and other efforts to construct schools throughout the nation. Therefore, I was pleased to suggest that [the petitioner] prepare some plans and designs for the “Education Park.”

Dr. [REDACTED] states that the petitioner "will soon be a planning member of CEQA 2020 and is scheduled to attend her first meetings in May of 2002." Given this statement, and the total absence of any mention of the project in the initial filing, the available evidence suggests that the petitioner did not begin working on this project until several months after the petition's November 2001 filing date. If the petitioner was not eligible at the time she filed her petition, then her subsequent involvement in this project cannot retroactively establish eligibility. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Immigration and Naturalization Service (now the Bureau) held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Furthermore, given that the petitioner was apparently not even involved in the project when Dr. [REDACTED] described it in his April 2002 letter, it is clearly premature to speculate as to the impact that the petitioner will ultimately have once she begins working on the multi-year project.

[REDACTED] president of the landscape architectural firm of [REDACTED] Associates, Inc., describes the petitioner as a prospective applicant for employment at the firm. Mr. Abe states:

[The petitioner's master's thesis] is an outstanding piece of work. It will advance the state of the art for architectural design as it incorporates the 4th dimension of energy. This is important, as the design will incorporate the principles of Chinese "Fengshui" in controlling the flow of energy from the environment. The flow of energy emanates from the sun, the moon, the wind, temperature, moisture, sound, running water, light and shadow, fragrances and texture. . . . It has definitely advanced the state of the art for architecture throughout the United States. . . .

In her theory of "Animated Architecture" which was published as No. 9502 in June, 1995 in the magazine known as "World Architecture," she proposed that there is an additional fourth [dimension] which is energy instead of time.

Mr. [REDACTED] discusses some of the petitioner's projects, such as St. Anthony's Medical Center and the Education Park in Los Angeles, stating that each of these projects has "advance[d] the state of the art." Mr. [REDACTED] as a potential employer, is clearly impressed by the petitioner's work, but the record does not establish the extent, if any, of the petitioner's impact on architects who have not met or worked with her.

[REDACTED] a member of the committee promoting the Unity Path monument discussed in the initial submission, states "I have seen many monuments throughout the United States and Europe. I believe that [the petitioner's] design for this monument will compare with the best of them." Mr. [REDACTED] indicates that this opinion derives from the petitioner's "preliminary sketches" for the monument.

[REDACTED] states that the petitioner "is a contender . . . in an ongoing competition for the design of a forty-five unit [apartment] complex" in Pasadena, California. Mr. [REDACTED] indicates that the other contenders "are all nationally and internationally known architects and certainly [the petitioner] is in their class." Mr. [REDACTED] states that the petitioner's "conceptual designs . . . show great promise for the reasons given below," but the remainder of the letter contains no such reasons. The text, from that point onwards, consists of a list of contenders, Mr. [REDACTED] own credentials as a property developer, and the concluding

statement that the petitioner's "contributions . . . may revolutionize the apartment construction industry." The letter does not contain any specific discussion of what those contributions are.

The petitioner submits new letters from the initial witnesses, who generally expand on their prior statements. [REDACTED] states that he has used the petitioner's principle of animated architecture in his own designs. The record does not show, however, that "animated architecture" is widely practiced in the field. The record contains several confident assertions that the petitioner's work could, can, or will "revolutionize" architecture, but no demonstration that the petitioner's work heretofore has already had such an effect. Without such evidence, it is mere speculation to contend that the petitioner's work will, one day, have that effect.

In a new statement, the petitioner states that she will serve the national interest through her work in "health architecture," which "harmonizes human, architecture and urban settings to the universe." The petitioner discusses Qi, postulated in ancient China as an energy or life force that "flows through the body, through all living things." The petitioner asserts that "health architecture [serves to] continue the Qi flow from our body, harmonize us to the universe, give us relief from stress and tiredness, [and] let us enjoy the peace and light from the heaven." The petitioner stresses that "health architecture" is "systematic [and] scientific," in contrast to the "mythical and supernatural" practice of feng shui (despite statements by several witnesses that the petitioner's technique incorporates principles of feng shui).

The petitioner asserts that her "permanent residence in the United States would contribute greatly to the new age of architect[ural] design." The petitioner states that the labor certification process would delay her ability to "interject my unique talents and cultural knowledge in these important national projects." The petitioner fails, however, to explain why such a delay would arise, given that the regulation at 8 C.F.R. § 214.2(h)(16)(i) allows an alien to work in the United States under an H-1B nonimmigrant visa while a labor certification is pending, and provisions of the American Competitiveness in the 21st Century Act (P.L. 106-313) provide for the portability of labor certifications, allowing an alien to change employers before adjusting status. These provisions in the statute and regulations effectively nullify the argument that labor certification will delay the petitioner's ability to work in the United States.

The director denied the petition, finding that the petitioner's own contribution does not warrant a waiver of the job offer requirement that, by law, attaches to the classification that the petitioner chose to seek. The director's decision also includes considerable language that applies to a different immigrant classification, specifically that of alien of extraordinary ability, as established by section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A) and implemented by regulations at 8 C.F.R. § 204.5(h). The director's extensive reliance on a "sustained acclaim" standard is erroneous and inapplicable to the classification that the petitioner seeks. Nevertheless, it is clear that the director did not base the entire decision on this erroneous standard, and that the director's error did not change the outcome of the decision.

On appeal, counsel states that the petitioner's "designs incorporate the 4th dimension of energy in architectural design and apply the Chinese 'Fengshui' principles," but does not explain why it is in the national interest to embrace the petitioner's theory of architecture. Counsel does not establish national interest simply by describing the petitioner's work.

The petitioner submits a new letter from [REDACTED]. This letter is virtually identical to Mr. [REDACTED]'s earlier letter, except for its concluding sentence, which reads “[the petitioner’s] work as an architect exceeds that of many qualified members of the architectural profession as her designs are outstanding and definitely substantially above average.” It cannot suffice simply to state that the petitioner is an especially skilled architect. The regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered.” A plain reading of the statute and regulations shows that aliens of exceptional ability are generally required to present a job offer with a labor certification at the time the petition is filed, and only for due cause is the job offer requirement to be waived. Clearly, exceptional ability in one’s field of endeavor does not, by itself, compel the Service to grant a national interest waiver of the job offer requirement.

Counsel, citing a new letter from Dr. [REDACTED] states “[p]lease note that the Los Angeles United School District states they will be using [the petitioner’s] design for their school buildings and that she will be assisting them as a planning partner with her architectural design.” The construction and maintenance of adequate public school facilities is clearly in the national interest, but this does not imply that the choice of the architect of those facilities is necessarily a national interest issue. Also, as noted above, there is no evidence that the petitioner was already involved with the LAUSD project when she filed her petition in November 2001.

The record shows that the petitioner has earned the respect of her mentors, employers, and collaborators, and that she has conceived original architectural ideas. The record, however, fails to demonstrate that the petitioner’s ideas such as animated architecture have been especially influential in the field, or that the U.S. has benefited or will benefit more from the petitioner’s services than from the services of other qualified architects.

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.