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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE

CIS, AAO, 20 Mass, 3/F

425 Eye Street, N.W.

Washington, DC 20536

SEP 29 2003

File: [REDACTED] Office: Nebraska Service Center

Date:

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)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

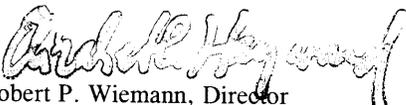
INSTRUCTIONS:

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 Citizenship and Immigration Services (CIS) 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, Nebraska 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 an alien of exceptional ability or as a member of the professions holding an advanced degree. 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 the classification, but 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) . . . 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.

It appears from the record that the petitioner seeks classification as an alien of exceptional ability. This issue is moot, however, because the record establishes that the petitioner holds a Master's of Business Administration degree in information technology from Trinity College and University. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

On appeal, the petitioner states that he "was under the impression that holding a CPA (Certified Management Accountant) degree would almost 'automatically' grant me access to a green card if I applied." As stated above, the petitioner's degree qualifies him as an advanced degree professional, a classification that normally requires an approved labor certification. At issue is whether the petitioner qualifies for a waiver of the job offer/labor certification requirement. The law does not provide a blanket waiver for all CPA's.

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 the 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 Dep’t. of Transp., 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.

We concur with the director that the petitioner works in an area of intrinsic merit, management consulting. The petitioner listed the proposed benefits of his work as follows: improving the U.S. economy by providing better information processing and management, improvement of wages and working conditions for U.S. workers by improving business administration and high technology, improving education and training programs for under-qualified U.S. workers by training potential mentors to understand state-of-the art information concepts and technologies, and assisting minority workers start new businesses and increase their competition worldwide. The director did not contest that these benefits would be national in scope. As the second prong only relates to the *proposed* benefits, we will not disturb the director’s conclusion. We note, however, that the petitioner must demonstrate that his impact in the above areas will be discernible at the national level. Some work that is in the national interest, such as pro bono legal work by a single lawyer, can be so attenuated at the national level as to be negligible. *See Id.* at 217, n. 3. Thus, in our

discussion below, we will consider whether the petitioner's prior achievements suggest that the petitioner's impact on the above areas will be national in scope.

It remains to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. The petitioner submitted several reference letters from employers that, according to the petitioner, establish his "past achievements."

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 project is so important that any alien qualified to work on this project 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 he seeks. 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 219, n. 6.

Director of Degree Consultants, Inc. at Trinity College and University, Inc. asserts:

[The petitioner] successfully completed all requirements of Trinity's Board of Examiners within the mutually agreed time limitations. Hence it is Trinity's Board of Examiners privilege to recommend the academic experience, methodical working and educational assiduity of [the petitioner] to you since we bear true conviction that [the petitioner] shall not cease to expose his capacities as a meaningful acquisition to fitting your purposes.

This letter appears to be an evaluation of the petitioner's education credentials. The petitioner's degree is not in question. Education, however, can be listed on an application for labor certification and is not a basis for waiving the requirement for an approved labor certification. Mr. [REDACTED] does not identify a specific accomplishment that has influenced the field of management consulting.

The petitioner works as a senior consultant for Ciber, Inc. In that position, he has provided services for State Farm Insurance, IBM, and other companies. [REDACTED] Consultant Services Manager for Ciber, Inc., discusses the petitioner's work for that company. Mr. [REDACTED] asserts that the petitioner has expanded and diversified the company's operations in information technology. Mr. [REDACTED] continues that the petitioner designs user-friendly systems and presents projects in a manner that is easy to comprehend. In addition, according to Mr. [REDACTED] the petitioner's "productivity far exceeds that of an average consultant in terms of quality as well as quantity." Mr. [REDACTED] notes the petitioner's "innovative ideas for Internet sites" and asserts that the petitioner is in a position to "greatly expand markets in the U.S." The only reference to the petitioner's influence beyond his employer is the assertion that "major companies in the United States regularly seek him out to join their teams." The petitioner did not submit any evidence to support this assertion, such as letters from major companies for whom he has not worked confirming their knowledge of his reputation and interest in his assistance.

██████████ Consulting Manager at PeopleSoft USA, Inc., asserts that he previously worked with the petitioner on projects for State Farm Insurance. Mr. ██████████ asserts that the petitioner successfully motivated and directed the efforts of over 100 individuals on a large and complex computer project. Mr. ██████████ praises the petitioner's professionalism and character. Mr. ██████████ also notes the petitioner's interest in entrepreneurial opportunities.

██████████ a manager at State Farm Insurance, provides general praise of the petitioner's professionalism when working with State Farm Insurance, including his ability to complete work on time and within the set budget. Mr. ██████████ continues:

Outside of State Farm [the petitioner] has applied his consulting talents to start up businesses on the Internet and in a new and unique packaging product, both of which have global potential. I've been involved in limited ways with some of this startup work and have had the opportunity to observe even more closely the impact his broad consulting talents have had – as he has provided advice and direction in the development of these businesses, their products, the legal aspects, and the marketing of the products. His encouragement and advice have been major factors in the progress these startup businesses have made.

Mr. ██████████ does not identify any business that the petitioner has consulted at the start-up phase that has experienced significant progress.

██████████ President of Great Business Solutions, Inc., indicates that he worked with the petitioner on projects for State Farm Insurance and provides general praise of the petitioner's professionalism and work ethic. Similarly, ██████████ an IBM project manager, provides general praise of the petitioner's consultations with IBM and opines that the petitioner has also provided beneficial consulting services to State Farm Insurance.

The record includes a letter from ██████████ President of Business and Personal Activities, Inc. in Florida. She asserts that the petitioner helped her business "get off the ground" and that the petitioner has the potential to help Americans, especially minority businesses. While Ms. ██████████ asserts that there is "great potential" for her company's products including "possible exports to other countries," she includes no evidence of her company's success and does not explain how the petitioner contributed to that success.

The petitioner submitted an attorney letter addressed to Eze Prez Corporation regarding a patent application for gift packaging and the patent application. The letter is not addressed to the petitioner, but was sent to the petitioner's home address. The record does not reveal that the patent has been awarded or that it is being successfully marketed.

On January 30, 2003, the director requested evidence comparing the petitioner's impact with other consultants. The director stated:

You may submit letters from recognized national experts in the field, i.e., representatives from Microsoft Corporation, Oracle, EDS, IBM, etc., (written [on] the agency's letterhead stationery) that explain how the beneficiary's immigration will individually impact the national interest. Again, speculative prospects are not considered sufficient.

In response, the petitioner asserted that he was "the main architect and one of the main shareholders" of Activity Crossing Corporation, "a corporation that could revolutionize publicity and marketing concepts." He asserts that "there are studies underway to patent or copyright these marketing concepts," which "could also be franchised worldwide." The petitioner further asserts that he is also "the main architect and majority shareholder (98%)" of Eze Prez Corporation. The petitioner asserts that this company is "a new and revolutionary patent-pending marketing and packaging concept that also has worldwide appeal." The petitioner submitted his own, self-serving analysis of both corporations.

In addition, the petitioner submits a letter from [REDACTED] Executive Account Manager at Ciber, Inc. Mr. [REDACTED] asserts that Ciber, Inc. is "a leading international, e-business integrator, providing IT services for Internet strategy and development, complete life cycle system integration (from customer quotation through cash collection), with superior value-priced services for both private and government sector clients." Mr. [REDACTED] further states:

[The petitioner] has been employed by CIBER, Inc. as a Senior Management Consultant since February 9, 1998 to the present day performing high level project management duties on critical projects for one of CIBER's largest clients. This client is a financial institution and is the 24th largest company in the world that performs financial transactions on national and global levels. CIBER provides this client with Information Technology solutions that enables them to adhere and comply with government and industry guidelines concerning e-commerce. [The petitioner's] expertise and background in e-commerce has enabled CIBER to successfully provide quality IT solutions to help the client with security, privacy, and a plethora of compliance issues at a national level.

[The petitioner] has a unique skills combination that being an accountant through related experience acquired in multi-national companies [sic]. [The petitioner's] IT expertise is in three main areas: distributed environments (multi-networks), mainframe, and e-commerce. His knowledge base lends strategically and professionally to any industry or government agency in the United States. His experience and skills are those generally mandated by the Department of Defense and defense contractors.

[The petitioner] has developed IT standards for mega-organizations comprised of 10,000 technical personnel. Additionally, his direction of personnel extends to managing off-shore resources in support of large project[s] in areas of program development, testing, methodology, security, licensing, legal, and operational. His bi-lingual background makes him ideal for multi-national work.

* * *

Most importantly, [the petitioner's] past and current experience in fraud prevention/detection, enforcement and investigation, operational audits and internal controls makes his skills in ever increasing demand especially in the world of hacking, terrorism, etc.

Mr. [REDACTED] concludes that Ciber, Inc. would be negatively impacted at a national level should the petitioner leave the United States.

[REDACTED] account representative for Bloomington Offset Process, Inc. (BOPI), attests to the print business the petitioner has generated for BOPI through Eze Prez Corporation and State Farm Insurance.

The director concluded the petitioner had not established that the benefit to be conferred by the petitioner would be adversely affected if a labor certification were required or that the national interest would be adversely impacted if such a certification were pursued.

On appeal, the petitioner asserts that labor certification would restrict his employment to a single company and would prevent him from his activities with Eze Prez Corporation and Activity Crossing Corporation. He references his mission statements as evidence of "what I could contribute to the United States were the TN and labor certification requirements dropped."

CIS 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 still must demonstrate that the self-employed alien will serve the national interest to a substantially greater degree than do others in the same field. *Id.* at 218, n. 5.

The petitioner's mission statements and assertions as to his ability to benefit the national interest through his operation of Eze Prez Corporation and Activity Crossing Corporation are entirely self-serving and speculative. The record contains no evidence that the petitioner has a track record of successful start up companies such that we can conclude that his projections for his new companies are reasonable. The petitioner also references his on-line marketing concepts posted at CityActivitiesOnline, a division of Activity Crossing Corporation. There is no evidence that this website has been particularly influential in the field. Nor does the record reflect that the particular patents being sought by the petitioner are especially significant. The petitioner cannot secure a national interest waiver simply by demonstrating that his company is seeking a patent. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *See id.*, at 221, n. 7. The petitioner's unsupported personal assurances that his innovations are significant are insufficient. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The reference letters are all from the petitioner's collaborators and immediate colleagues. The petitioner's employer provides the most detailed discussion of the petitioner's work and its importance to the employer, but fails to adequately explain why the petitioner's skills could not be enumerated on an application for labor certification. All of the remaining references appear to have met the petitioner while working with him in Bloomington, Illinois. While such letters are important in providing details about the petitioner's role in various projects, they cannot by themselves establish the petitioner's influence over the field as a whole. The petitioner has not provided letters from independent high-level officials at major companies or relevant government agencies attesting to the importance of the petitioner's work. State Senator [REDACTED] letter advising the petitioner to seek the assistance of his congressman is not persuasive. While Senator [REDACTED] concludes that he is "impressed with your credentials and know you would be a very productive citizen of the United States," such generic praise is not persuasive evidence of the petitioner's ability to impact the interests of the United States at a national level.

On appeal, the petitioner claims that he has "often been invited as consultant/motivational speaker to Fortune 500 corporations, churches, prisons, etc." As stated above, going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Id.* The record contains no evidence that the petitioner is routinely requested to speak before major companies around the United States regarding management consulting.

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.