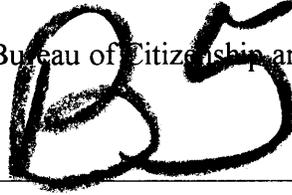


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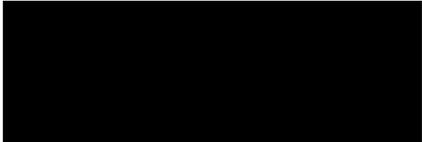
U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

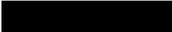
**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



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



SEP 29 2003

File:  Office: CALIFORNIA 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

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 to classify the beneficiary 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, a provider of business services, seeks to employ the beneficiary as an international business public relations representative. 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 beneficiary 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.

According to the I-140 petition form, the petitioner provides “professional services – accounting, business set up, corporations, partnerships, electronic services, tax consulting.” The petition form indicates that the petitioning company was established as a sole proprietorship in 1979, incorporated in 2001, and had eight employees as of August 2002.

In a letter accompanying the initial filing [REDACTED] president of the petitioning entity, states that the petitioner’s occupation qualifies under a shortage occupation under Schedule A, group II, as established by the U.S. Department of Labor. It cannot suffice, however, for the petitioner simply to claim that the occupation qualifies for the designation. Department of Labor regulations at 20 C.F.R. § 656.22(d) require the submission of “documentary evidence testifying to the current widespread acclaim and international recognition” of the beneficiary, and specify several evidentiary requirements to establish such acclaim and recognition. The petitioner does not address any of these requirements, nor does the petitioner even mention Schedule A, group II, in any submission after the initial filing. The petitioner has not, at any time, set forth a coherent claim to address the specific requirements for Schedule A, group II, designation. Designation under Schedule A, group II, is a separate procedure from the national interest waiver, and the two are mutually exclusive. On the Form I-140, the petitioner specifically indicated that it seeks a national interest waiver for the beneficiary, in which case Schedule A, group II, designation is not available. Because the petitioner has consistently claimed that the beneficiary is eligible for a national interest waiver, and has ceased to discuss Schedule A, group II, designation, we will consider the petitioner’s initial claim regarding Schedule A, group II, designation to be abandoned.

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.

describes the petitioning company and the beneficiary's work:

Our studies have shown that there is a need for specialists with specific initiatives and approaches to increase the commercial and trade exchange between California and other regions of the world. Our studies also indicate that professionals with specific international exposure, qualifications, and experience are the minimum indispensable qualifications necessary to accomplish these purposes.

We strongly think that [the beneficiary] is the professional that certainly is helping our company to accomplish our goals based on his education, qualifications and extensive and outstanding international experience.

RESPONSIBILITIES:

[The beneficiary] would be in charge of promoting business opportunities for the State of California by emphasizing on [sic] the benefits and solutions of expanding business globality [sic] for Californian and foreign enterprises interested in investing in this state.

To accomplish these objectives, a broad knowledge of international business practices in Latin America is imperative. . . .

In this regard, [the beneficiary] has successfully developed an outstanding international career with the Venezuelan company "Belfort Glass C.A.," and "Jemko Enterprises" of Hong Kong through promoting investments and international trade, by applying international business policies and applications. This resulted in the expansion of profits for both companies and their respective countries.

As a result, and in accordance with the principles of globalization, while relying on [the beneficiary's] knowledge in this very specific subject, our company would have the complete capacity to help promote trade between the United States and California companies and Latin America corporations. Furthermore, [the beneficiary] will also negotiate representation agreements and investments from enterprises of that region to the US.

[The beneficiary's] professional experience would also help to organize and facilitate appropriate international seminars [sic], forums, technical assistance and workshops. This strategy will allow [the petitioner] to provide the tools for US business owners and enterprises to sell and promote their products and services not only in Latin America, but also around the world. However, this specific activity is not only restricted to export activities, but also includes the promotion of international investments in California.

The initial submission also includes the following description of the position of international business public relations representative:

Plans and conducts the International Public Relations Program in order to develop stronger business connections between South America and East Asian countries and the State of California. Will direct Plans and communications for the development and creation of foreign corporations interested in doing business with the State of California. Will prepare and distribute fact sheets, news releases to enterprises that are interested in learning about the professional services that we offer to our in-house and foreign clients. Will represent employer during community projects and at public, social, and business gatherings as well as with media representatives.

The petitioner submits copies of the beneficiary's resume, which lists employment for companies in California, Hong Kong, and Venezuela, and various credentials indicating that the beneficiary is, among other things, a registered tax preparer.

The petitioner submits a copy of a letter from [REDACTED] president of Belfort Glass, Caracas, Venezuela. The letter, dated January 31, 2000, was originally prepared as a recommendation letter addressed to the president of Jemko Enterprises, Hong Kong. Mr. [REDACTED] states:

[The beneficiary] worked as International Sales Manager (Exports) between 1991 until 1998. During the performance of his duties, [the beneficiary] developed successful and great capabilities in the management of International Business, and especially in export negotiations.

As a result of [the beneficiary's] professionalism and outstanding approach to the subject, we are proud to mention that our Company was awarded in 1994 as the Exporter of Laminated Glass of the Year in Venezuela. Not only did [the beneficiary] have a great development of his professional skills, but [he] also proved to have an effective approach towards international businessmen and International Trade Organizations, demonstrating great capabilities of leadership.

An issue of *America Economica*, subtitled *Latin America's Business Magazine*, included an article about Belfort Glass and its success in exporting its products. The article discusses the beneficiary and includes his photograph, and quotes the beneficiary as stating that the company exports 70% of its production.

[REDACTED] honorary consul of Peru in San Francisco, states that she traveled to Hong Kong on business and "had the pleasure to meet and work with [the beneficiary] acting as marketing Executive of JEMKO ENTERPRISES (HK) Ltd." The petitioner assisted Ms. [REDACTED] "to contact manufacturers of Aluminum Panels in China to be exported for architectural projects to Latin America." Ms. [REDACTED] states that, owing to the beneficiary's "extensive experience in international business," she is "able to continue a business relationship with these companies in Hong Kong and China as well as with the one in Brazil and Peru."

The director requested further evidence that the petitioner has met the guidelines published in *Matter of New York State Dept. of Transportation*. The director also requested materials to corroborate several of the petitioner's unsubstantiated claims. In response, the petitioner has submitted additional letters and evidence. [REDACTED] states that the beneficiary "has increased our company's income by 35%," and indicates that the beneficiary "has been working diligently with two of our main clients." The clients are Guevara's Trucking, Inc., "a transportation company located at Downey, California," and Banya Biru, Inc., an Alhambra, California-based company "in the business of marketing live fish."

In an unsigned letter, the petitioner states that the national interest waiver is "a short cut" to avoid the "4 or 5 years of employer's frustrations and expensive legal fees" said to be involved in obtaining a labor certification. General complaints about the labor certification process are not persuasive arguments in favor of a national interest waiver. As observed in *Matter of New York State Dept. of Transportation, supra*, nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers to avoid the inconvenience of the labor certification process.

The petitioner notes that the beneficiary is a registered tax preparer and holds a California real estate license (issued September 25, 2002, after the petition's filing date), but the petitioner does not explain how these credentials affect the beneficiary's abilities in facilitating exportation and international trade. If anything, the fact that the beneficiary recently sought and obtained these credentials implies one of two things. Either the beneficiary's duties with export and international business occupy only a fraction of his time, so that the beneficiary can, or perhaps must, perform other activities such as sell real estate and prepare taxes, or else he intends to pursue employment in those areas once he is legally authorized to do so.

The petitioner lists several of the beneficiary's claimed accomplishments, but the petitioner offers little substantiation except for newspaper articles from 1994 regarding the success of Belfort Glass. It cannot be ignored that one of the beneficiary's basic job duties is to promote international trade and export, and therefore many of the materials in the record simply demonstrate the beneficiary's competence at this task.

The petitioner submits a letter signed by [REDACTED] of the Peruvian Chamber of Commerce of California. It appears that this individual may be the same person as [REDACTED] president of the petitioning company. The record contains a document notarized by [REDACTED] If [REDACTED] and [REDACTED] are in fact the same person, it is to say the least misleading for her to sign documents under different names depending on the organization she claims to represent. Furthermore, if the individuals are one and the same, then any statements attributed to [REDACTED] to claims by the petitioner rather than outside corroboration of such claims.

The director denied the petition, acknowledging the intrinsic merit of the beneficiary's work but finding that the petitioner's own contribution is primarily limited to California, and 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 noted that the petitioner had failed to submit documentation establishing the national importance of the beneficiary's work.

On appeal, the petitioner argues that the petitioner's "experience could be translated to the national level in the United States." The petitioner does not demonstrate that the beneficiary's work has already had such an impact. The petitioner's expectation that the beneficiary will ultimately have such an effect amounts to speculation rather than evidence.

The petitioner states that the director unfairly burdened the petitioner with the "practically impossible" task of obtaining letters from the U.S. Department of Commerce or other national-level agencies and organizations to establish the national significance of the beneficiary's work. While the petitioner's evidence need not take the form of such evidence, it remains that the evidence that the petitioner has submitted consists largely of letters (one of which appears to be signed by [REDACTED] under a variant name) and one burst of publicity that the beneficiary enjoyed while working for Belfort Glass.

The petitioner states "[w]e consider that [the beneficiary's] outstanding studies on the MBA Program at John F. Kennedy University of California, and his successful experience and contribution to the 'Contra Costa Software Business Incubator' in Concord, California, as well as in [the petitioning company] are proof of his ability for an efficient contribution to the economy of the United States." Because the petitioner seeks to classify the beneficiary as a member of the professions holding an advanced degree, the beneficiary's MBA degree is a fundamental requirement rather than evidence of special merit. With regard to the particular projects, some of which are described only vaguely in the record, we have already noted above that the petitioner's very job title implies the facilitation of international trade. The fact that the beneficiary has been productive at this task does not entitle him to a national interest waiver. The record offers few means by which we can reliably compare the beneficiary to others in his profession and thereby determine that the beneficiary's contributions are of a magnitude or significance to warrant the special, added benefit of a 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.

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.