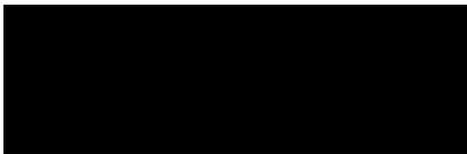


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U.S. Citizenship
and Immigration
Services



FILE: 

Office: TEXAS SERVICE CENTER

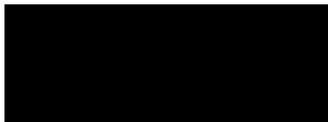
Date:

APR 15 2004

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Mari Johnson

For Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability. The petitioner seeks employment as a research assistant. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner does not qualify for classification as an alien of exceptional ability. Thus, the director did not address whether the petitioner had 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.

The petitioner seeks classification as an alien of exceptional ability. The regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth six criteria, at least three of which an alien must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business. These criteria follow below.

The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered." Therefore, evidence submitted to establish exceptional ability must somehow place the alien above others in the field in order to fulfill the criteria below; qualifications possessed by every member of a given field cannot demonstrate "a degree of expertise significantly above that ordinarily encountered." The petitioner claims to meet the following criteria.

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

On the Form ETA-750B signed by the petitioner, he indicated that he received a bachelor's degree as a Physician's Assistant from the Tubman National Institute of Medical Arts. The petitioner did not submit the degree itself. In response to the director's request for evidence, counsel asserted that the petitioner "holds a Bachelor's degree in Physician Assistant Studies." The petitioner submitted an "Evaluation Report" from the Foundation for International Services (FIS) evaluating the petitioner's credentials. The evaluation indicates

that the petitioner received a diploma from the Tubman National Institute of Medical Arts in 1982 that is “equivalent to 3 years of university-level credit from an accredited college or university in the United States.”¹ Only by taking into consideration the petitioner’s work experience does the evaluator conclude that the petitioner has “the equivalent of a bachelor’s degree in physician’s assistant studies from an accredited college or university in the United States.” The petitioner also submitted his diploma and transcript from the Tubman National Institute of Medical Arts.

The director concluded that the petitioner had not submitted any evidence to meet this criterion. On appeal, the petitioner submits an original transcript from the Tubman National Institute of Medical Arts. The transcript indicates he received a three-year degree. The petitioner also submitted the “minimum standards” for his position as research assistant. Those standards provide:

Three educational routes exist for entry into this classification: (1) a MS degree in a relevant field of study; (2) a BS degree in a pertinent field of study and three yrs’ relevant experience; or (3) the successful completion of 2 years of college coursework (typically 18 semester hours) in a pertinent discipline and six yrs’ relevant experience.

While we concur with the director that the evidence of record is insufficient to meet this criterion, we find some discussion of that evidence is warranted. The evidence for each criterion must be evaluated as to whether it demonstrates a degree of expertise significantly above that ordinarily encountered. In addition, we find that we must compare the petitioner’s level of expertise with that ordinarily encountered in the United States. Thus, we cannot take into account the political situation in Liberia that has hindered the petitioner’s attempt to obtain further education in that country. While a degree is not required for the position sought, the petitioner has not established that a three- or four-year degree is unusual for research assistants. Thus, we cannot conclude that a three-year degree demonstrates “a degree of expertise significantly above that ordinarily encountered.”

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

The petitioner submitted employer letters confirming his employment in the field from 1984 through the date of filing, more than 10 years later. The director concluded that the petitioner met this criterion and we concur.

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

As stated by the director, the petitioner did not submit any evidence relating to this criterion. On appeal, the petitioner asserts that a license is not required in the field. While this statement does not overcome the director’s determination that the petitioner does not meet this field, we note that a license in a field that is required to practice in the field is not evidence of a degree of expertise above that ordinarily encountered. Rather, a license in a field that does not require such a license is more persuasive.

¹ While not claimed by the petitioner or counsel, we note that as the petitioner does not have a degree that in and of itself is equivalent to a bachelor’s degree, we cannot consider him as having the equivalent of an advanced degree pursuant to 8 C.F.R. § 204.5(k)(2), which defines a bachelor’s degree plus five years of progressive experience as equivalent to an advanced degree. This provision does not allow the substitution of experience for the initial degree, only the advanced degree.

Evidence of membership in professional associations

As with the above criterion, the director concluded that the petitioner did not submit any evidence relating to this criterion and the petitioner responds on appeal that there are no memberships required for practice in the field. We incorporate our comments regarding requirements in the field stated above.

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

At the time of filing, the petitioner was working at the University of Alabama at Birmingham (UAB), Division of Cardiovascular Disease. The petitioner submitted a letter from Dr. Francois M. Booyse, the petitioner's supervisor at UAB. Dr. Booyse indicates that the petitioner previously was "instrumental in approaches that led to the near eradication of river blindness" and "is involved in identifying and defining the molecular regulatory mechanisms underlying heart disease at the level of gene transcription." Dr. Booyse asserts that this work "will provide significant new insights into our understanding of how genetic predisposition." Regarding the petitioner's past work at UAB, Dr. Booyse asserts that the petitioner played a major role in the laboratory's projects, having developed "several new highly sophisticated and complex biochemical and molecular biology assays for determining the genetic predisposition of patients who may be at increased risk for developing premature hear[t] disease and heart attacks." Other letters in the record provide general praise of the petitioner's skills. The petitioner also submitted his published articles.

The director concluded that the petitioner had not established that he "has been recognized for significant contributions to the entire field of biomedical research." On appeal, the petitioner requests that the letters be reconsidered. Letters solicited by the petitioner in support of the petition are not the type of formal recognition contemplated by the regulations. They do not carry the same evidentiary weight as objective evidence in existence prior to the preparation of the petition.

The record does contain some certificates issued to the petitioner. In 1997 UAB issued a certificate recognizing the petitioner's five years of work for UAB. In 1998, the Rotary Club of Shades Mountain Sunrise issued the petitioner an International Vocational Award. Finally, on an unknown date, the Onchocerciasis Research Project at the Dana Center for Preventive Ophthalmology (DCPO) at Johns Hopkins University jointly with UAB presented the petitioner with a certificate in recognition of his contributions "during the Ivermectin Trials for Treatment of Onchocerciasis conducted on the Liberian Agricultural Company Plantation Grand Bassa County, Liberia, 1984 through 1990." A certificate recognizing a certain number of years of employment is not recognition for achievements and significant contributions in the field. The record contains no evidence that the Rotary Club has expertise in the petitioner's field. Regardless, the record contains no evidence relating to the basis or criteria for the award from the Rotary Club. While the DCPO/UAB certificate appears to relate to the petitioner's work in the field, the record contains little evidence explaining the significance of this award. Even if we considered this certificate sufficient to meet this criterion, the petitioner would still meet only two. A petitioner must meet three to establish eligibility for the classification sought. For the reasons discussed above, the petitioner falls far short of meeting any other criterion.

As stated by the director, the petitioner has not demonstrated that he is an alien of exceptional ability; thus, the issue of whether waiving the job offer requirement is in the national interest is moot.



The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.