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U.S. Citizenship  
and Immigration  
Services

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APR 20 2004



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 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.

*Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was initially approved by the Director, California Service Center. The director revoked the approval of the petition on May 18, 2000, having determined that the petition had been approved in error. The petitioner appealed the director's decision to revoke approval. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal of the director's decision on September 23, 2002. The petitioner subsequently filed a motion to reopen. The AAO granted the motion and reaffirmed the denial of the petition on July 3, 2003. The matter is now before the AAO on a motion to reconsider. The motion will be granted, the AAO's previous decision will be affirmed and the petition will be denied.

The petitioner requests "that this motion be passed to the Service Center Director's desk." The documentation of record shall, as a matter of routine, be returned to the California Service Center. With regard to action by the director, the petitioner has removed this matter from the director's jurisdiction by appealing the decision to the AAO. The director has no authority to unilaterally overrule an AAO decision, and the AAO has found on three separate occasions that the petition cannot properly be approved.

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 and/or a member of the professions with the equivalent of an advanced degree. The petitioner seeks employment as a journalist/writer/publicist. 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 revoked the approval of the petition based upon the determination that the petitioner does not qualify for classification as an alien of exceptional ability or as a member of the professions holding an advanced degree. The notice of revocation also questions the extent to which the petitioner's efforts will serve the national interest. The AAO, in both of its earlier decisions, has concurred with the director's finding that the petitioner has not established eligibility for the classification sought.

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 and the AAO have, in previous decisions, repeatedly discussed the regulations pertaining to classification as an alien of exceptional ability or as a member of the professions holding an advanced degree. Those regulations, published at 8 C.F.R. § 204.5(k), need not be repeated in full here, although portions will be discussed in context.

In his second motion, the petitioner alleges “unprofessional conduct on the part of the adjudicator” who conducted the petitioner’s adjustment interview in 1998, stating that the adjudicator’s unfounded allegations of misrepresentation “may have . . . influenced the decision to revoke.” The AAO has already addressed these claims. Leaving aside the adjudicator’s allegations, the revocation still stands on the basic finding that the petitioner has not submitted sufficient evidence to demonstrate that he qualifies either as an advanced degree professional, or as an alien of exceptional ability. Therefore, the petition cannot be approved, and the initial approval was in error and was properly revoked, regardless of what may or may not have taken place at the adjustment interview. The AAO has no jurisdiction over personnel matters at the district office level, and the appellate/motion process is not an appropriate forum for pursuing grievances against individual Service Center employees.

The petitioner asserts that an Immigration and Naturalization Service memorandum dated April 7, 1999, “protects [the] earlier approval” of his petition. That memorandum states that a precedent decision published in August 1998 (*Matter of New York State Dept. of Transportation*, 22 I&N Dec. 215 (Comm. 1998)) should not be used to reopen and revoke national interest waiver petitions that were approved before August 1998. The petition in this proceeding was approved in October 1997. The April 1999 memorandum does not state that all waiver petitions approved prior to August 1998 are utterly immune from revocation on any grounds. Rather, the terms of the memorandum specifically deal with the 1998 precedent decision. As the AAO has already explained, the revocation is based on numerous grounds, including the basic finding that the petitioner does not qualify as a member of the professions holding an advanced degree or as an alien of exceptional ability. Those circumstances warranted denial in 1997, in 1998, and in 2004, both before and after the issuance of the precedent decision in question. Given the fact pattern uncovered by the director, and the evidence contained in the record, the petition should never have been approved and the director acted properly in revoking that approval.

The petitioner argues that the AAO has minimized the extent to which the director’s decision relied on *Matter of New York State Dept. of Transportation*. It remains that the director cited multiple grounds for revocation. The petitioner must overcome *all* of these grounds in order to show that the decision was fundamentally unsound. The observation that the petitioner has overcome one of the weaker grounds cannot suffice, however frequently or emphatically that observation is repeated.

The petitioner asserts that his intent has been to serve the national interest “through impacting education on U.S. children by virtue of my school volunteer work and the human rights activities” which the petitioner pursued at Amnesty International. The petitioner maintains on motion that he sought to work as a journalist only as a source of “income so as to enable me to continue with the Volunteer work being performed in the national interest.” The AAO, in its 2002 appellate decision, has already stated that “unpaid volunteer work is not ‘employment’ *per se* and thus it is not properly considered in the context of an employment-based immigrant classification. We cannot find that an alien qualifies for an employment-based immigrant classification based on his intention to perform charitable volunteer work.” A pledge to pursue volunteer work, entirely separate from one’s employment, was not grounds for a national interest waiver before *Matter of New York State Dept. of Transportation*, and it is not grounds for a waiver now. We reject the petitioner’s argument that, because volunteer work serves the national interest, an alien’s occupation is largely irrelevant, so long as the alien intends to pursue volunteer work in the United States. The fact that the waiver is limited to a specific immigrant classification, which in turn is defined by employment qualifications, demonstrates that the waiver is inseparably tied to the alien’s employment activities.

The petitioner maintains that he holds a bachelor’s degree, despite repeated findings to the contrary by the director and by the AAO. In its 2002 decision, the AAO observed:

The petitioner's post-secondary education consists of a "National Diploma in Mass Communication" earned from 1983 to 1985, and a "University Diploma in Technology" in "Corporate Communication" earned from 1994 to 1996. . . .

The petitioner states that his "academic qualifications could be considered as a comparable equivalence of a bachelor's degree," and that "INS regulations make provision for" such equivalency. The regulations, however, contain no such provision. An alien who holds no advanced degree can establish equivalency through a bachelor's degree and post-baccalaureate experience, but there is no comparable provision for an alien with no bachelor's degree. As cited above, the regulation at 8 C.F.R. 204.5(k)(3)(i) requires the petitioner to submit "[a]n official academic record" of either "a United States advanced degree or a foreign equivalent degree" or "a United States baccalaureate degree or a foreign equivalent degree." A combination of foreign degrees, none of which is equivalent to a U.S. baccalaureate, cannot in the aggregate form a single foreign equivalent degree.

On motion, the petitioner cites the "3-for-1 rule," according to which three years of employment is deemed to equal one year of undergraduate study. The 3-for-1 rule, set forth at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), pertains to one, specified nonimmigrant visa classification. Nothing in the statute, regulations, or case law indicates or implies that the 3-for-1 rule applies to aliens seeking immigrant classification under section 203(b)(2) of the Act. That classification is governed by its own regulations. 8 C.F.R. § 204.5(k)(3)(i) states that, to show that the alien is a professional holding an advanced degree, the petition must be accompanied by:

- (A) An official academic record showing that the alien has an United States advanced degree or a foreign equivalent degree; or
- (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

At a minimum, the alien must possess at least an actual bachelor's degree. The regulations require "a foreign equivalent degree," not "the equivalent of a degree." The requirement of "an official academic record" underscores that it must be an actual degree, rather than work experience (which produces no academic record).

Among the evidence that can be used to establish exceptional ability, 8 C.F.R. § 204.5(k)(3)(ii)(A) also calls for "an official academic record" of a degree received. 8 C.F.R. § 204.5(k)(3)(ii)(B) relates to evidence of employment experience. Because experience and education are treated separately, the regulations governing exceptional ability clearly do not equate experience and education.

The AAO has also observed that some of the petitioner's key claims are not substantiated by documentary evidence. The petitioner responds by asserting the AAO has made "subjective judgment[s] . . . without due consideration of available facts." The "available facts" are greatly limited by the absence of required documents. There is nothing "subjective" about the well-established policy that requires a petitioner to support his claims. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

The director and the AAO have informed the petitioner on numerous occasions that the petitioner does not qualify for classification as a member of the professions holding an advanced degree, or as an alien of exceptional ability. The petitioner's latest response consists primarily of unsubstantiated claims and untenable arguments that are in obvious conflict with the regulations and with case law.

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. Accordingly, the previous decision of the AAO will be affirmed, and the petition will be denied.

**ORDER:** The AAO's decision of July 3, 2003, is affirmed. The petition is denied.