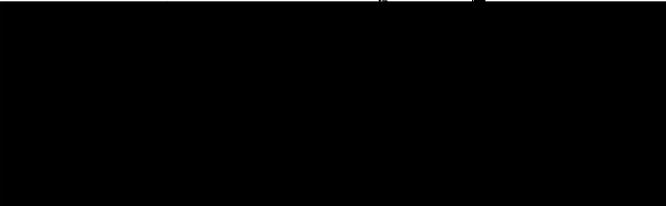




U.S. Citizenship
and Immigration
Services

[Handwritten signature]



FILE: [Redacted]
LIN 03-098 50569

Office: NEBRASKA SERVICE CENTER

Date: APR 26 2004

IN RE: Petitioner: [Redacted]
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:



PUBLIC COPY

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

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.

[Handwritten signature]
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 (AAO) 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 an alien of exceptional ability. The petitioner is an "insurance company and financial products provider" that seeks to employ the beneficiary as "the manager of its agency in Seattle, Washington." 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 an alien of exceptional ability, 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) Subject to clause (ii), 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 found that the beneficiary qualifies as an alien of exceptional ability. 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 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 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.

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 occupation is so important that any alien qualified to work in that occupation must also qualify for a national interest waiver. At issue is whether this beneficiary's contributions in the industry are of such unusual significance that he merits the special benefit of a national interest waiver, over and above the visa classification sought. By seeking an extra benefit, the petitioner assumes an extra burden of proof. The petitioner must demonstrate the beneficiary's past history of achievement having some degree of influence on his industry as a whole. *Id.* at note 6.

We concur with the director that the beneficiary works in an area of intrinsic merit. It remains, then, to determine whether the beneficiary's work is national in scope and whether he will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

A letter from the beneficiary accompanying the petition states:

I am a Certified Financial Planner, Chartered Financial Consultant and Chartered Life Underwriter. I am a licensed stock broker and have been in the insurance and financial planning industry for 18 years. During that time I have been a member of both the Canadian and American Associations of Insurance and Financial Advisors. I have been a member of the Society of Financial Service Professionals for 16 years and the General Agents and Managers Association for 16 years.

I am listed in the 2002 National Directory of Who's Who in Executives and Professionals. I have qualified for membership in the prestigious Million Dollar Round Table, Court of the Table and International Top of the Table, which constitutes the top 1/10 of 1% of all insurance producers worldwide. I have qualified for the General Agents and Manager's Award — platinum level. I am the only manager in Beneficial Life to garner this award, an award given to less than 5% of all insurance managers worldwide.

I moved to Seattle in December of 1999 as a Management Consultant, really to see if I might be able to make a difference with an agency that had tasted limited success. Upon my arrival I found five agents and very little useful production being done. In three years time we have had over a 500% increase in production and presently have nearly 30 financial advisors associated with our organization. We have

things in place to ensure this growth continues and that myself and my people continue to add to our communities in a significant way, both economically and socially.

The record contains a certificate from GAMA (General Agents and Managers Association) International indicating that the beneficiary received a "National Management Award" at the platinum level. Information from GAMA's website accessed at www.gamaweb.com states:

GAMA International is the only association dedicated to addressing the professional development needs of management in the insurance and financial services industry.... GAMA International members are skilled field and home office distribution leaders who are responsible for more than 90,000 advisors/agents who serve 41 million clients. GAMA provides its members access to networking opportunities with industry leaders, quality professional development products, and prestigious recognition awards.

The [National Management Award] is designed to recognize the leader(s) or first-line manager(s) of an agency/firm.

Requirements:

1. The applicant(s) MUST be a...GAMA International member in good standing and meet all general requirements as outlined in the Awards Packet. By applying for an award from GAMA International, the applicant certifies that all general requirements are met.
2. Only applicants from a mail or central agency office, representing an entire agency/firm, will be accepted.
3. Managers of brokerage agencies may apply for the IMA.
4. The applicant must personally supervise at least eight full-time career agents, advisors or sales representatives in the agency/firm.
5. In cases of...co-general agent/manager situations, field office heads may apply jointly if they do not have double the required production credits needed to file separate applications.
6. The application fee of \$100 (plus \$50 per co-applicant) must accompany the application.

According to GAMA's website, two examples of "ways to qualify" for the "National Management Award" include:

ORDINARY/TRADITIONAL: The ordinary/traditional...qualifications require that at least 50% of an applicant's first-year commissions must come from life insurance. There are four levels to this award: Bronze, Silver, Gold and Platinum, which require commission levels of \$600,000, \$1,200,000, \$1,800,000 and \$2,500,000, respectively.

MULTILINE: The Multiline IMA is structured much like the traditional...with the corresponding levels for the Bronze, Silver, Gold and Platinum awards. Please check the Awards Packet for the

Multiline matrix that illustrates these levels. Each manager must meet or exceed three of the five benchmarks in one category (Bronze, Silver, Gold or Platinum)... Participation percentages are based on year-end actual agents/representatives. Also, the manager must have been assigned to their current market for at least nine months. As with all the awards, all qualifications must be approved by the manager's home office.

In addition to documentation of the beneficiary's awards, professional memberships, licenses, and other evidence showing that he satisfies the regulatory criteria for an alien of exceptional ability, the petitioner submitted several witness letters.

Charles Cutler, Senior Vice President and Chief Marketing Officer, Beneficial Life Insurance Company, states:

[The beneficiary's] employment at Beneficial Life will continue producing substantial economic benefits that not only benefit the economy of the State of Washington, but that also benefit the economy of the entire United States. As explained above, Beneficial Life does business throughout the United States. [The beneficiary] is working for Beneficial Life in one of the United States' largest cities. The economies of Seattle and Washington are connected to, and are an integral part of, the national economy. Accordingly, the benefits that [the beneficiary] brings to the economies of Seattle and the State of Washington also benefit, both directly and indirectly, the economy of the United States. Further, his success as the Agency Manager will continue producing results that also improve wages and working conditions in the State of Washington and throughout the United States. His contributions will also continue improving educational opportunities for U.S. children and under-qualified workers, as well as improve health care.

We accept that the beneficiary has benefited his present employer, Beneficial Life, but his ability to significantly impact the national economy has not been demonstrated. The beneficiary's impact on the U.S. economy (based on the number of policies sold) would be so attenuated at the national level as to be negligible. For example, GAMA notes that its membership alone is responsible for "90,000 advisors/agents who serve 41 million clients." Charles Cutler's statements are not adequate to significantly distinguish the beneficiary from other managers in the insurance industry. It could easily be stated that every company manager contributes in some small way to the local or national economy. While the beneficiary may control the "wages and working conditions" at his particular job site, there is no objective evidence indicating that, beyond his managerial activities for Beneficial Life, the beneficiary has influenced "wages and working conditions in the State of Washington or throughout the United States" in general. Nor has it been shown how the beneficiary's individual contributions have improved "educational opportunities for U.S. children and under-qualified workers, as well as improve[d] health care" on a national scale. The beneficiary's financial impact, viewed in terms of the insurance industry as a whole or the national economy, is negligible.

Charles Cutler further states:

[The beneficiary's] combination of education, industry training and certification, and experience uniquely qualify him for this position and justify granting the National Interest Waiver in his case. [The beneficiary] possesses unique knowledge, abilities, and experience that set him apart from others in the field. He has made unprecedented and valuable contributions to the U.S. economy during the past three years. He has played a critical role in revitalizing the Seattle Agency, which services one of the largest

cities in the United States. By increasing the Agency's productivity more than 500% in a three-year period, [the beneficiary] has demonstrated a tangible, immediate manifestation of a track record of success, unparalleled in the insurance industry.

...Beneficial Life knows from first hand experience with its Seattle Agency that persons with less education, training or experience than [the beneficiary] cannot adequately perform the job duties for the position. Prior to hiring [the beneficiary], the Seattle Agency, under the leadership of less qualified managers, never performed anywhere near how it has performed during the last three years under [the beneficiary]. It was not until we hired someone of [the beneficiary]'s distinguished background and ability that the Agency finally turned into a productive and profitable agency, one of the best in our company.

Pursuant to *Matter of New York State Dept. of Transportation, supra*, an alien cannot demonstrate eligibility for the national interest waiver simply by establishing a certain level of training or education that could be articulated on an application for a labor certification. It is important to note that the beneficiary's individual efforts primarily serve the financial interests of his company and their clients (rather than the U.S. as a whole). The beneficiary may have increased the number of policy holders for Beneficial Life, but such success does not demonstrate an unusual level of influence on the insurance/financial services industry. The performance of management functions for a given employer is of interest mainly to that particular employer.

Charles Cutler notes that Beneficial Life filed a labor certification application with the State of Washington's Employment Security Department that has been pending since August 30, 2001. Charles Cutler states: "Given the caliber of this position and the stature of [the beneficiary's] distinguished credentials, waiting that long is simply unreasonable in this case. The benefit of granting [the beneficiary] truly outweighs the inherent national interest of a very cumbersome and time-consuming labor certification process." A letter from the State of Washington's Employment Security Department submitted in response to the director's request for evidence states that that agency is "not able to predict when [the beneficiary's] case will be handled."

As stated in *Matter of New York State Dept. of Transportation, supra*, at 223, 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. By law, aliens of exceptional ability are generally required to have a job offer and a labor certification. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d 1289, 1295 (5th Cir. 1987). Congress plainly intends the national interest waiver to be the exception rather than the rule. Here, the petitioner must show that the beneficiary's individual accomplishments have significantly influenced his industry as a whole.

Kent Cannon, President and Chief Executive Officer, Beneficial Life Insurance Company, states:

In my opinion, [the beneficiary] has been unusually successful in his efforts in the Seattle area, an area where sales and agency activity had languished for a number of years. Among his successes are the recruitment of additional significant producers to Beneficial Life and the rejuvenation of former Beneficial Life producers. It is of highest importance to Beneficial Life that [the beneficiary] continue his successful efforts in the Seattle area. He has established an excellent reputation among the agents and managers of Beneficial Life.

Raymond Adams, Financial Consultant/Investment Advisor, states:

[The beneficiary] is a quality manager. I have associated with him for the last 2 years. He is one of the very few that I have ever encountered that has such a tremendous ability to teach the insurance concepts on an academic level as well as personal "hands on" training in the field.

* * *

He has taken a floundering Washington Office, and has developed it into one of the Top 3 in the company. I have been familiar with the office he manages (Beneficial Life), for the last 20 years, and have been contacted numerous times by various managers to represent them in Washington [state].

* * *

[The beneficiary] personally has been involved in helping not only myself, but also 5 others of whom I have close association to higher levels of achievement in income, and service to our clients than we otherwise could have accomplished without him.

Don Skanchy, Independent Agent, Beneficial Life Insurance Company, states:

At the time [the beneficiary] took over the responsibility as an agency manager for [the Washington Office], we only had a few agents with total income of a little over two hundred thousand dollars. Three years later this agency has grown to almost thirty agents with a total annual income of over a million dollars. This is phenomenal growth attributed to [the beneficiary's] ability to work with and lead people.

Henry Whiffen, Financial Planner, The Estate Advisory Group, states that he and the beneficiary "have worked together with joint clients and, in [that] capacity, have met together many times." Henry Whiffen states:

As manager, [the beneficiary] has taken the worst producing agency, for Beneficial Life Insurance Company, and completely turned it around for the better. They are now the 2nd leading agency, nationally, for Beneficial Life, achieving a compounded growth of 500% over a 3-year period of time. For this he has won several prestigious company awards. He is also an active member of several industry associations.

The witnesses in this case consist entirely of individuals with direct ties to the beneficiary. These individuals describe the beneficiary's managerial expertise and value in generating growth for his company, but their statements do not demonstrate that the beneficiary's work has attracted significant attention from throughout the insurance and financial planning industry as a whole. Letters from those close to the beneficiary certainly have value, for it is those individuals who have the most direct knowledge of the beneficiary's specific activities. It remains, however, that the petitioner's witnesses became aware of the beneficiary's work because of their direct contact with him; their statements do not show, first-hand, that the beneficiary's work is attracting attention on its own merits, as we might expect of contributions to the industry that have a nationally significant impact. Independent evidence that would have existed whether or not this petition was filed, such as articles published in reputable financial journals or other national business media, is more persuasive than subjective statements from individuals selected by the petitioner. While the beneficiary has won awards for his productivity through GAMA, the evidence indicates that his employer nominated him and paid for his recognition. The beneficiary's awards will be further addressed below.

The director requested further evidence that the beneficiary had met the guidelines published in *Matter of New York State Department of Transportation*. In response, the petitioner submitted a second letter from Charles Cutler and evidence of Beneficial Life's charitable activities.

Charles Cutler states:

[The beneficiary] makes a significant contribution to Beneficial Life's overall productivity and contribution to the U.S. economy. For example, in 2002, [the beneficiary] managed eight percent of the Company's total production, or a total of \$1,143,209 first year commission equivalent. Through April 2003, he has managed nine percent of the Company's total production, or a total of \$617,169. He is also having a meaningful impact on the company's sales productivity. For example, his unit's sales productivity is thirty percent higher than the Company's sales productivity.

Simply stating that the beneficiary has provided beneficial services to his employer is not adequate to demonstrate his national impact on the U.S. economy or the insurance industry in general. Charles Cutler's statements fail to take into account the issue of degree. For example, a business unit that produces one million dollars worth of products or services is, in a small way, contributing to the U.S. economy, but the effect of this one million dollars is negligible in terms of size of the national economy or the U.S. insurance industry.

Charles Cutler further states:

[The beneficiary's] contributions will also improve wages and working conditions for U.S. workers, particularly for Beneficial Life's employees and customers throughout the United States. In addition to managing the Seattle agency, [the beneficiary] serves as the Vice Chairman of Beneficial Life's Chairman's Council. This small, select group of top producing agents and managers consults with the Company on a wide range of topics, including policy design, customer services initiatives, target markets, and ways to increase production. Recognizing his unique and innovative approaches that have produced such impressive results, [the beneficiary's] peers on the Chairman's Council elected him to this important office. In the short time he has served as the Vice Chairman, the entire company and its workforce throughout the United States have already benefited from [the beneficiary's] efforts through an improvement in overall productivity.

Charles Cutler does not specifically identify the amount of overall company productivity ascribed to the beneficiary's work as Vice-Chairman. Nor does the evidence in this case suggest that the beneficiary's primary job function involves working on the Chairman's Council rather than managing the Seattle agency. And lastly and most importantly, it is noted that the benefit of the beneficiary's work on the Council is still limited to his immediate employer.

Charles Cutler further states: "It should be noted that [the beneficiary's] contribution to the Company's overall productivity...in turn increases the amount of funds...contributed [by Beneficial Life] to...charitable causes." While Beneficial Life's contribution of a portion of its earnings to charitable causes is certainly commendable, the issue in this case is the beneficiary's impact on the insurance industry or the U.S. economy rather than Beneficial Life's charitable activities.

We find that the statements from the witnesses in this case are not adequate to demonstrate that the beneficiary's work has measurably influenced the greater field.

The director denied the petition, stating that the petitioner failed to establish that a waiver of the requirement of an approved labor certification would be in the national interest of the United States. The director concluded that the evidence was not persuasive "that the beneficiary has made, and will make, a measurable positive impact on the United States east of Utah." The director noted that the primary impact of the beneficiary's work was limited to Beneficial Life's Seattle agency.

On appeal, the petitioner submits a third letter from Charles Cutler, a printout of the insurance policies attributable to the Seattle agency under the beneficiary's management (dated August 1, 2003), and evidence showing that the beneficiary received a 2003 "First In Class Award" from GAMA International.

Charles Cutler states:

[The beneficiary's] work has had a direct impact on almost every region of the country. To help you see just how expansive his impact is, I am attaching a... [report] dated August 1, 2003... You will note that the list of states covers virtually every region of the country.

* * *

To help you see the magnitude of [the beneficiary's] current impact, you only need to total the face amounts of the policies. The total is over \$364 million dollars, of which over \$67 million is outside of the State of Washington. This is the amount of money that will potentially flow into these regions as insurance policies are paid upon the occurrence of the insured risks.

The face amounts of the insurance policies are irrelevant to the "magnitude of impact" as there is no certainty that these amounts will ever be collected by the policy holders. In terms of tangible economic impact, evidence showing the amounts of the beneficiary's policies that have already been paid out would be far more relevant. Regardless, there is no comparative evidence showing that the above dollar amounts are unusual when compared to those from insurance agencies having the same number of employees as the beneficiary's Seattle location. The record contains no evidence to suggest that the level of economic impact ascribed to the beneficiary is any greater than that of his managerial peers working for companies such as AIG, Guardian, MassMutual, MetLife, John Hancock, New York Life, or Prudential.

According to the August 1, 2003 report, the beneficiary's agency has 1,788 policies in Washington State, 146 in California, 81 in Alaska, 62 in Utah, 28 in Minnesota, 21 in Idaho, 20 in Hawaii, 18 in Arizona, 16 in Oregon, 12 in Colorado, 12 in Wyoming, 10 in Texas, and less than ten policies in each of the remaining fifteen states listed in the report. Aside from the fact that almost all of the insurance policies the beneficiary's Seattle agency sold for Beneficial Life are concentrated in the western half of the United States, the petitioner has not shown that, based on the number of policies sold, the beneficiary has had a nationally significant impact on the U.S. insurance industry. We note here that "GAMA International members...serve 41 million clients."

Matter of New York State Dept. of Transportation indicates that while education and pro bono legal services are in the national interest, the impact of an individual teacher or lawyer would be so attenuated at the

national level as to be negligible. *Id.* at 217, note 3. We find such reasoning applicable to the beneficiary's occupation (life insurance sales management) as well. In this case, the beneficiary's impact would generally be limited to Beneficial Life's Seattle agency and, to a lesser extent, its life insurance policy holders.

In regard to the beneficiary's 2003 "First In Class Award," the record contains no evidence showing that this award was bestowed upon the beneficiary prior to the petition's filing date. New circumstances that did not exist as of the filing date cannot retroactively establish eligibility as of that date. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Immigration and Naturalization Service (legacy INS) held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Subsequent developments in the beneficiary's career cannot retroactively establish that he was eligible for the classification sought as of the filing date. Even if we were to consider this award, for reasons to be explained below, it is not sufficient to demonstrate the beneficiary's eligibility for a national interest waiver.

The application packet for the "First In Class Award" for 2004 (accessed at www.gamaweb.com) states:

Eligibility Requirements

Since the purpose of this award is to recognize leadership, each company is responsible for determining the criteria it will use to select its nominee.

Recognition Package Costs

The cost of the complete recognition package is \$1,850. You may either choose the complete package or create your own by purchasing the number of items appropriate for your company. (See page 4 for details).

Page 4 includes a pricelist of more than a dozen items, including the "First in Class Annual Book," which may be purchased for \$25 each (a copy of which was submitted on appeal). According to the application materials on GAMA's website, it is apparent that recognition packages are provided to any company willing to pay the required fee. No information has been provided regarding the number of "nominees" whose companies pay the "complete recognition package" fee of \$1,850 but who do not receive a First in Class Award. It is apparent that the beneficiary's awards from GAMA resulted from nomination by his immediate employer rather than through an objective industry-wide consensus.

In accordance with the statute, exceptional ability is not by itself sufficient cause for a national interest waiver. The petitioner must show that the beneficiary has significantly influenced his industry and that his past record demonstrates an ability to serve the national interest (rather than just the interest of his immediate employer or its clients). The evidence presented in this case does not reflect that the beneficiary has attracted significant attention beyond his employer, or that the beneficiary's accomplishments are of demonstrably greater value than the achievements of other agency managers employed in comparable positions throughout the U.S. insurance and financial services industry.

We find that the beneficiary's individual impact on the national interest of the U.S. is negligible in terms of the scale of the U.S. insurance industry. We do not dispute that the beneficiary's services are beneficial to his company and its policyholders, but the beneficiary has not shown any measurable influence on the industry at the national level. The record contains no indication as to what level of national benefit can be ascribed

specifically to the beneficiary that would set him apart from other managers who run local insurance agencies. While the beneficiary has plainly earned the respect and admiration of his employer and business associates for improving the output of the Seattle agency, there is no evidence suggesting that the beneficiary's work has had and will continue to have a nationally significant impact on the U.S. economy or the insurance industry as a whole.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person of exceptional ability should be exempt from the requirement of a job offer based on the 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 occupation, 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.

ORDER: The appeal is dismissed.