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U.S. Citizenship  
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Services

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[Redacted]

FILE: [Redacted] SRC 03 059 50907

Office: TEXAS SERVICE CENTER Date: DEC 03 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:

[Redacted]

**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, 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 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 seeks to employ the beneficiary as a chemical engineer. 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 did not contest that the beneficiary qualifies for classification as a member of the professions holding an advanced degree, but concluded 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.

On appeal, counsel asserts that he did not receive a complete copy of the director's decision. On October 5, 2004, this office faxed counsel a full and complete copy of the director's decision and afforded counsel 30 days in which to supplement the appeal. On November 5, 2004, counsel submitted a supplemental brief.

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 beneficiary holds a Master's degree in chemical and environmental engineering from the Colorado School of Mines. The beneficiary's occupation falls within the pertinent regulatory definition of a profession. The beneficiary 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.

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 beneficiary works in an area of intrinsic merit, environmental engineering, and that the proposed<sup>1</sup> benefits of his work, reduced pollutant emissions, would be national in scope. It remains, then, to determine whether the beneficiary will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

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 beneficiary's contributions in the field are of such unusual significance that the beneficiary 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 the alien's past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

In support of the petition, the petitioner submitted two letters of support describing the beneficiary as an "expert" in the field. Dr. [REDACTED] Engineer with the National Renewable Energy Laboratory and former director of the Colorado Institute for Fuels and Engine Research at the Colorado School of Mines, asserts that he directed the beneficiary's research at the Colorado School of Mines. Dr. [REDACTED] however,

<sup>1</sup> The director implied that the beneficiary would have a national impact. We make no such prediction. Rather, the appropriate determination on this prong is whether the proposed benefits, if realized, would have a national impact. We find that they would.

does not provide any discussion of the significance of the beneficiary's research or assert that it had any influence on the field as a whole. [REDACTED] an air-permitting specialist with [REDACTED] asserts that he worked with the beneficiary during a collaboration between the petitioning company and Shell. As with Dr. [REDACTED] Mr. [REDACTED] does not identify a specific contribution or claim that the beneficiary has had any influence on the field as a whole.

In addition to the brief letters of support, the petitioner submitted a report to the Colorado Department of Public Health and the Environment. The report is a collaboration between the Colorado School of Mines, The University of California, Davis, and Energy and Environmental Analysis, Inc. The beneficiary is listed as one of four authors from the Colorado School of Mines. The petitioner also submitted the beneficiary's article that does not appear to have been published in a peer reviewed publication because the publication is not identified and there are no page numbers. Nevertheless, the article is copyrighted by the Society of Automotive Engineers, Inc.

In response to the director's request for additional documentation, counsel asserted that the labor certification process was too lengthy for securing a qualified candidate and that the beneficiary's knowledge of state and federal regulations and skills and experience cannot be enumerated on an application for labor certification. Counsel explained that, as the Environmental Protection Agency (EPA) does not "have any control or supervision" over the beneficiary, it cannot provide a letter of support. Counsel also asserted that publication in and of itself is evidence of "critical acclaim." Finally, counsel asserted that the beneficiary's accomplishments at work set him apart from others in the field.

The director concluded that the record did not establish that the beneficiary had a record of success with some degree of influence in the field, noting that evaluations by independent experts in the field are more persuasive than the recommendations of an alien's immediate circle of colleagues and that while publication may be indicative of originality, without evidence of citations, a petitioner cannot demonstrate the influence of those articles.

On appeal, counsel asserts that the beneficiary's position does not require recommendation letters or published articles. Thus, according to counsel, the beneficiary will benefit the national interest to a greater extent than an available U.S. worker with the minimum qualifications. In his subsequent brief, counsel asserts that the use of the word "expert" by two of the references distinguishes the petitioner from others in the field. Counsel further asserts that addressing a report to the Colorado Department of Public Health and Environment and authoring a report copyrighted by the Society of Automotive Engineers, Inc. is evidence of the significant benefits of the petitioner's work.

The assertion that the petitioner's publications and reference letters go beyond the job application requirements does not address the discussion in *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 219, which states "it clearly must be established that the alien's past record justifies projections of future benefit to the national interest." The footnote to that sentence provides that that the petitioner must demonstrate "a past history of demonstrable achievement with some degree of influence on the field as a whole. . . . In all cases the petitioner must demonstrate specific prior achievements which establish the alien's ability to benefit the national interest."

In addition, the use of the word "expert" is not decisive without supporting evidence of specific contributions to the field. Finally, more significant than who commissioned the report or what entity obtained a copyright for the report is the actual impact the report or article had on the field. The record lacks such evidence.

We concur with the director that the record lacks even a claim that the beneficiary has had a specific success in the field that has garnered even the most minimal attention nationwide. The record contains no evidence that the reports authored by the beneficiary have even been distributed nationwide, let alone relied upon and cited.

Counsel's previous assertion that the beneficiary's knowledge of regulations and his skills warrant the waiver is not persuasive. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 221 states that "[s]pecialized or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold." *Id.* In the following paragraph, the AAO held that knowledge of the metric system was insufficient. Moreover, nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process. *Id.* at 223.

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.