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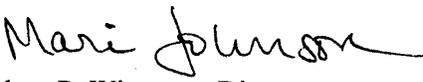
IN RE: Petitioner:  
Beneficiary:

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.

*for*   
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 classification 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 employment as a database marketing/statistical analyst. At the time of filing, the petitioner worked at Wells Fargo Bank, San Francisco, California. 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 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.

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 Citizenship and Immigration Services] 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.

The petitioner states "I seek employment in the area of database marketing of financial products for small businesses, which can be defined as merging combinations of financial products and services with appropriate small business customers through sophisticated statistical data analysis methodologies." The petitioner states that database marketing requires expertise in several "areas of highly specialized knowledge," and that he has gained this expertise through his Ph.D. in mathematics, as well as subsequent course work in statistics.

The petitioner states "my models . . . have been used to provide right combinations of financial services and products to appropriate small business customers in the United States and Canada. My models proved to be efficient and, as a consequence, generated tens of millions of dollars in revenue for financial institutions, which were using them."

The petitioner argues that he should not be subject to the job offer requirement because "Labor Certification is a long and arduous process." General observations about the labor certification process cannot establish that a specific alien qualifies for a waiver. It remains that the petitioner is allowed to work in the United States as a nonimmigrant while a labor certification is pending.

The petitioner's other main argument in support of the waiver request is that "competition is the main guarantee of quality," and without his competition, U.S. workers working in the same field will have less incentive to improve the quality of their own services. Again, this is a general argument rather than a specific claim, particular to this petitioner's work.

Several letters accompanied the initial filing of the petition. Joan D. Johannson, director of Product & Marketing for Investments & Pensions at Canada Life Assurance Co., previously supervised the petitioner at Canada Trust. She states:

[The petitioner] developed a highly effective suite of data analysis methodologies that allowed him to create a unique package of Small Business Banking Targeting Models for Canada Trust. As far as I know, [the petitioner] was one of the first designers of small business banking targeting models of this type in Canada. The direct mailing programs based on the Small Business Targeting Models created by [the petitioner] won collectively the Silver Award of the Canadian National Marketing Association for financial institution direct

marketing programs in 1999. Besides a phenomenal response rate, they were also considered the most profitable ever run by Canada Trust, returning on average \$12 on every \$1 invested.

Several officials of Wells Fargo Bank offer letters of support. Some letters share common language, such as the assertion that the petitioner “made a significant contribution to the US economy by correctly identifying high opportunity small business markets in 22 States of the United States and Canada. As a result, small businesses of these geographic [areas] received a combination of Wells Fargo Bank products and services, which maximized their growth.”

The above testimonials indicate that the petitioner has been very successful at securing new clients for the financial companies that have employed him. The letters, however, do not amount to objective evidence that the petitioner’s work in this regard has been in the national interest, as opposed to the interest of his employers and their clients.

The director instructed the petitioner to submit further evidence to meet the guidelines published in *Matter of New York State Dept. of Transportation*. In response, the petitioner submits several additional letters as well as additional arguments. Many of the petitioner’s arguments concern the sale of loans from the Small Business Administration. As with a number of the petitioner’s original arguments, these assertions are general in nature, discussing the petitioner’s occupation and field of endeavor rather than the petitioner’s own contributions to that field. After these general arguments, the petitioner asserts that his models are more accurate and efficient than other models used in the field, and therefore his efforts have been of particular benefit to the United States and Canada.

A number of witnesses offer their personal confirmation that the petitioner “won collectively the Silver RSVP Award of the Canadian Marketing Association for financial institutions in 1999” (wording varies from letter to letter). None of these witnesses claims to be an official of the Canadian Marketing Association (CMA), and none of them otherwise demonstrate standing to personally attest to the petitioner’s receipt of an award from the CMA. The record contains no documentation from CMA to establish how many others shared this “collective” award (e.g. Canada Trust as a whole, a small project team within the company, etc.). While the petitioner has submitted several documents regarding his training and professional background, the record contains no documentation of the petitioner’s receipt of an award which, the witnesses claim, is the most significant Canadian award of its kind. Similarly, the record contains no first-hand, objective (non-testimonial) evidence to establish that the petitioner’s efforts have had a significant economic effect beyond the usual fruitful relationship between businesses and well-chosen financial institutions.

Dr. Ivan S. Khorol, head of administration at the International Academy of Sciences, Education, Industry & Arts, states that the petitioner “was one of the first researchers who applied finite signature models in the field of psychological bionics.” Dr. Khorol does not explain how this work is directly relevant to the petitioner’s work marketing financial products to small business, except to state that the petitioner has a “solid mathematical background.”

Various statisticians who have not worked with the petitioner state that, upon review of materials that the petitioner has provided to them, they conclude that the petitioner possesses a “degree of expertise [that] is significantly above that ordinarily encountered in the field.” This term closely mirrors the regulatory definition of “exceptional ability” at 8 C.F.R. § 204.5(k)(2). By law, aliens of exceptional ability are generally subject to the statutory job offer requirement. Therefore, letters to the effect that the petitioner is an alien of exceptional ability cannot suffice to establish that the petitioner qualifies for a waiver.

The director denied the petition, stating that the petitioner had explained the overall importance of his occupation, but that the petitioner had failed to establish that he, individually, stands out in his field to an extent that warrants the special benefit of a national interest waiver. The director stressed that general observations about the importance of the petitioner's profession cannot demonstrate that this particular petitioner qualifies for a waiver of the job offer requirement that normally applies to members of that same profession.

On appeal, the petitioner correctly notes that the director sometimes relies on incorrect standards, referring for example to "sustained national or international acclaim." This standard applies to a different immigrant visa classification. Indeed, in the next paragraph, the director acknowledged that the petitioner need not establish such acclaim. While the reference to national or international acclaim was perhaps confusing, there is no indication that this superfluous reference prejudiced the outcome of the decision (i.e., that the director would have approved the petition but for this reference).

The petitioner asserts that his waiver request is based on his existing accomplishments, rather than speculation about his future work. The petitioner repeats the assertion that his work for Wells Fargo Bank has benefited businesses in 22 states. Clearly the petitioner's work has had a broad reach. But, as the petitioner also observes, "Wells Fargo Bank, N.A. is also the largest single lender to small businesses in the United States." There is no indication that the petitioner is personally responsible for a significant portion of this success. Given that Wells Fargo Bank lends money to small businesses all over the country, and the petitioner has worked for their marketing department, the national scope of the petitioner's work is not surprising. There is no evidence that the petitioner's work has significantly changed the face of financial marketing; rather, he is a marketing analyst for a large bank with a national client base. It is clearly in Wells Fargo Bank's interest to employ skilled analysts, but it does not follow that the petitioner's work has created a significant amount of business that would otherwise never have taken place. The record as a whole fails to support petitioner's claim to have "revolutionized his field."

The petitioner's appeal includes several letters and documents, many of them copies of previous submissions. The petitioner submits documentation about the CMA's RSVP awards for 2002. The director did not dispute the petitioner's claim to have received an RSVP award in 1999, although we note that the petitioner's submission on appeal does not include a list of winners from 1999. It remains that the record contains no documentation from the CMA itself, to confirm either the petitioner's receipt of the award or the significance of the petitioner's role in the project that won the "collective" award.

The petitioner submits documentation showing that [REDACTED] previously a witness on the petitioner's behalf, nominated the petitioner for membership in the International Academy of Sciences, Education, Industry & Arts, and that the petitioner became a member in late 2002, nearly a year after the filing of the petition. The record contains nothing about this organization apart from its own self-serving materials, and therefore there is no indication that individuals outside the Academy itself attach particular significance to membership therein.

It is obvious from the record that the petitioner's employers, including important financial institutions, have highly valued the petitioner's services and contributions. The overall record, however, does not persuasively demonstrate that the petitioner has offered, or will offer, significant benefit to the United States (as opposed to a given employer and its clients). As stated above, exceptional ability in business is no guarantee of a 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.