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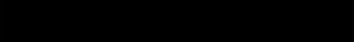


U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

**U.S. Citizenship
and Immigration
Services**



FILE: EAC 02 131 51051 Office: VERMONT SERVICE CENTER Date: **JAN 21 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: 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, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont 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 to conduct cloud research. 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 CIS] 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's initial submission consisted of little more than a copy of a diploma from Tbilisi State University in the Republic of Georgia. The petitioner states that this diploma represents a master's degree in Geophysics and Meteorology. The diploma itself states that the petitioner "was given [the] qualification of Engineer Meteorologist." A subsequently submitted credential evaluation indicates that this diploma is equivalent to a U.S. master's degree in Meteorology.

In documentation accompanying the initial filing, the petitioner indicates that he seeks employment working with "computer and computing networks" at New York City Technical College of the City University of New York.

The director instructed the petitioner to submit documentation to meet the guidelines published in *Matter of New York State Dept. of Transportation*. In response, the petitioner states:

I will register my Georgian company in [the] United States and [my] main goal will be making relevant American companies interested in continuing my company's successful business in the US. For this purpose I have developed a business plan which includes the following: organizing of scientific practical polygon in New York State, which will realize increasing of atmospheric sediment, the necessity of which is particularly recognized today, when the city authorities were forced to apply the extraordinary and unpopular measures because of economical use of water. For this purpose there is a negotiation between environmental and meteorological authorities.

The petitioner states that, to raise funds to accomplish the above, he "will arrange electronic auction [on] EBAY of American goods which [are] fairly popular in Georgia." Regarding his scientific research, the petitioner states that he studied "cloud conception," "cloud phase position" and "trajectories of cloud movements," originally for "the Soviet military" and later for the "established scientific practical company 'LLC NITA TRANS.'" The petitioner states he was "a leading specialist" at Tbilisi State University, while "actively participating in reception, studying and monitoring of Euro Commission's programs."

The petitioner submits several witness letters. Professor Roman Kezerashvili of New York City Technical College, who has "known [the petitioner] almost 25 years" and worked with the petitioner at Tbilisi State

University, states that the petitioner's "research experience is well documented." Vakhtang Kartvelishvili, a lecturer at Lancaster University, United Kingdom, has also known the petitioner "since mid-70-ies" and states that the petitioner "is among the leading experts in the world" regarding "[u]nderlying mathematical apparatus of hyper-spherical functions." N. Begalishvili, director of the Institute of Hydrometeorology of the Georgian Academy of Sciences, affirms that the petitioner "worked at the Institute of Hydrometeorology in 1984-1991 as an engineer of the Experimental Field Base of Department of Cloud Physics."

The evidence does not indicate that the petitioner continues to be involved with cloud physics. A letter from Eros Kitsmarishvili, president of Rustavi 2 Broadcasting Company, indicates that the petitioner is "a very skilled programmer and . . . experienced administrator of local Area Networks," as well as "the director and owner" of "L.D.T. NITATRANS," which "carr[ies] out the function of consultant of new informational technologies." Other documentation indicates that the petitioner's company, L.D.T. NITATRANS, belongs to the Georgian Federation of Professional Accountants and Auditors.

The director denied the petition, stating that the record does not indicate what the petitioner has done in the United States between his March 2001 entry and the filing of the petition a year later. On appeal, the petitioner states "I'm not going to run business and conduct scientific activity at the same time." Rather, his "partners and associates" will conduct "electronic commerce . . . and its income will support my scientific activity." Regarding his intended work in the United States, the petitioner states:

I plan to work on cloud conception, cloud phase position and trajectories of cloud movements. The aim of this scientific activity is to increase atmospheric sediment in particular areas of the United States for agricultural purposes. Such work will be conducted based on the demands from governmental authorities in areas, where agriculture suffer[s] from lack of atmospheric sediment.

It is not clear what the petitioner means by "atmospheric sediment." Given that the petitioner's expertise lies in cloud physics, and the petitioner refers to agricultural applications, it appears that the petitioner is referring to rain and other forms of precipitation. If this is true, then the petitioner proposes to serve the national interest by bringing rain to "particular areas of the United States . . . where agriculture suffer[s] from lack of atmospheric sediment." By making such a claim, the petitioner bears a heavy burden to establish that he is, in fact, able to control rainfall. The petitioner does not seem to refer merely to predicting cloud movements, because prediction is primarily a passive, observational activity, which cannot actively "increase atmospheric sediment." Without hard evidence to show that the petitioner can determine where, and how much, rain falls, we can give little weight to the petitioner's claims.

If, on the other hand, "atmospheric sediment" refers to something other than the precipitation of water, then we cannot discern the nature of the petitioner's work. Because clouds are composed primarily of water, we cannot readily determine what agriculturally useful "atmospheric sediment," other than water, would come from clouds.

Whatever "atmospheric sediment" is, the petitioner's assertion that he will be able to finance this research by selling goods on eBay appears to be little more than speculation. The petitioner has not shown that he has established any kind of track record selling goods on eBay that would justify the presumption that his future earnings from that source will be sufficient to finance his ongoing research.

The petitioner states that a job with a U.S. corporation would be too restrictive for his needs. The petitioner asserts that he has been “engaged in independent scientific research focused on the climate and atmosphere characteristics of different regions of the United States. Such research, which I conduct through different libraries and internet, is necessary for commencement and final realization of my scientific project.” The petitioner does not elaborate. While the petitioner asserts that his “work will be conducted based on the demands from governmental authorities,” there is no evidence that any local, state or federal governmental authority in the U.S. has expressed interest in, or is even aware of, the petitioner’s work.

While the petitioner has attempted to clarify the nature of his work, it is still far from clear. If the petitioner states that he can bring rain or other precipitation to drought-stricken parts of the United States, such a claim necessarily requires compelling evidence rather than simply a discussion of the petitioner’s plans. If “atmospheric sediment” is not precipitation, then it is not at all clear what it is, or how it would involve clouds and benefit agriculture. Accordingly, the petitioner has not established that his entry would serve the United States to a degree that would warrant a waiver of the job offer/labor certification requirement that normally attaches to the immigrant classification that the petitioner has chosen to seek.

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.