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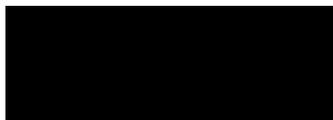
Office: NEBRASKA SERVICE CENTER

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Petitioner:

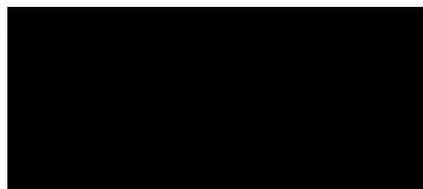


Beneficiary:

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:



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 *Mari Jensen*

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 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. At the time of filing, the petitioner was working as an environmental inspector for Natural Resource Group, Inc. 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 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 petitioner holds a Master of Science degree in Watershed Ecosystems from Trent University in Canada. The director found 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 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 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 petitioner's contributions in the field are of such unusual significance that the petitioner 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. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at note 6.

In a letter accompanying the petition, counsel states:

[The petitioner] serves the national interest in the emerging profession of Environmental Scientist in the oil/gas pipeline installation industry, specifically as an Environmental Inspector charged with overseeing the environmental aspects of gas and oil pipeline construction.... [The petitioner] has been approved by the United States Department of Energy, specifically the Federal Energy Regulatory Commission (FERC), to act for, and on behalf of, FERC as a FERC Third-Party Environmental Compliance Monitor on FERC approved pipeline installation projects.... Indeed, at this writing [the petitioner] has been detailed to conduct FERC environmental compliance inspections on the Florida Gas Transmission Pipeline Project Phase V, running through the Florida panhandle, Southern Alabama and Southern Mississippi.

The record, however, contains no official letters of support from top managers at FERC, or any other federal agency, attesting to the petitioner's individual importance to the national interest. The petitioner provided evidence of an e-mail exchange between the petitioner and Lauren O'Donnell, Chief, Gas Branch 2, FERC, in which she refers to the petitioner as her “expert in the field.” However, it is immediately apparent that keeping the FERC aware of environmental compliance issues at the job site to which he was assigned was an inherent duty of the petitioner's position. Therefore, the unofficial e-mail is less than probative in demonstrating the petitioner's individual impact on the national interest.

Also provided was a copy of a letter from Richard Hoffman, Chief, Environmental Review and Compliance Branch II, addressed to Richard Terrazas, Vice President, Maritimes and Northeast Pipeline Management

Company, commending Maritimes and Northeast (rather than the petitioner) for its commitment to environmental compliance. Mr. Hoffman's letter states that FERC's inspection teams were "impressed by the dedication of [Maritimes and Northeast's] environmental inspectors and the generally careful work of the contractors," but petitioner is not specifically mentioned or singled out. Moreover, the letter goes on to discuss problem "areas that need more and continued attention."

The petitioner submitted documentation showing the importance of oil and gas pipeline development to the economic interests of the United States. Also provided was information describing the duties of an environmental inspector and information regarding FERC's use of a third-party monitoring service. This information helps to demonstrate the intrinsic merit and national scope of the petitioner's work; however, the petitioner must still show that his individual accomplishments are of such an unusual significance that he qualifies for a waiver of the job offer requirement. By law, advanced degree professionals and 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. Beyond establishing his eligibility for the underlying visa classification, the petitioner must also demonstrate that his work has had a significant impact on the environmental regulatory industry.

To that end, the petitioner initially submitted several witness letters.

Kirstine Thorne, Senior Environmental Specialist, Williams, states:

The Vector Pipeline was installed in the states of Illinois, Indiana and Michigan during 2001 and 2001. My role on that project was that of a Federal Energy Regulatory Commission (FERC) Inspector under contract to a third party. As you may know, the FERC has been authorized by the Federal Government to regulate, among other duties, the installation of large interstate natural gas pipelines and associated infrastructure throughout the United States.

* * *

It was in my capacity as a FERC inspector on the Vector Pipeline Project that I met and worked with [the petitioner]. He was an Environmental Inspector under contract to the sponsoring gas company (i.e., Enbridge Energy). His duties included enforcement of the FERC's regulations in addition to the staggering requirements (including permits) of state and local authorities. I found [the petitioner's] work to be highly professional and reflect an unquestionable degree of competency.

* * *

It is my understanding that [the petitioner] has recently been elevated to the role of FERC 3rd Party Monitor of the Florida Gas Transmission Phase V Project, the same position that I held last year on the Vector Pipeline Project. There are only a handful of experts in the United States that possess the high level combination of training, education, and experience to fulfill this role...

Objective qualifications such as training, education, and experience are amenable to the labor certification process. 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.

Carey Johannesson, Project Services Manager, Enbridge Pipelines, Inc., states that in 2000 his company contracted Essex Environmental, Inc. (the petitioner's employer at that time) to aid with the environmental aspects of the construction of the Vector Pipeline. Carey Johannesson states:

[The petitioner] was one of the first inspectors on site to ensure pre-construction compliance with environmental regulations as they pertained to the storage of pipe in designated facilities. He also conducted inspections of pre-construction horizontal directional drills (HDDs)... [The petitioner] then proceeded to work on the main construction portion of the Vector Pipeline and was an integral part of the environmental compliance effort. In fact the portion of the pipeline that he worked on was considered the most environmentally compliant stretch that was constructed in 2000.

Carey Johannesson also notes that "high-caliber environmental inspectors are difficult to find in this business." Tim Presley, Foster Wheeler Environmental Corporation, states that expansion of pipeline distribution capacity in the U.S. "will require a tremendous increase in the supply of environmental professionals assigned to safeguard the integrity of our natural resources. These professionals are difficult to find during the leanest of times, let alone during periods of rapid capacity expansion." Larry Brown, Operations Manager, Natural Resource Group, Inc. (NRG), offers a similar observation, stating: "There is a shortage of people exhibiting [the petitioner's] credentials in this country..." Additional witnesses provide similar assertions. Pursuant to *Matter of New York State Dept. of Transportation, supra*, however, a shortage of qualified workers in a given field, regardless of the nature of the occupation, does not constitute grounds for a national interest waiver. Given that the labor certification process was designed to address the issue of worker shortages, a shortage of qualified workers is an argument for obtaining rather than waiving a labor certification.

Larry Brown further states:

We at NRG were immensely impressed with [the petitioner's] command of this demanding position, his understanding of difficult construction and environmental issues, and his ability to work constructively with both company and contractor personnel. He formed part of the construction crew that contributed to the lowest incidence of non-compliance amongst the four construction crews on the [Vector] pipeline.

* * *

NRG included the petitioner's resume in a bid for a contract to undertake monitoring duties under the direction of FERC on the Florida Gas Transmission V Project. FERC and the sponsoring gas pipeline company often arrange for a third-party environmental inspection firm to perform FERC oversight duties on behalf of the United States Government. This position requires a deep knowledge of...FERC's environmental regulations and a thorough understanding of a wide array of construction and mitigation techniques.

George McLachlan, Environmental Manager, Maritimes & Northeast Pipeline, states that his company "organized the installation of a 200-mile pipeline in the States of Maine, New Hampshire, and

Massachusetts.” George McLachlan indicates that the Maritimes & Northeast Pipeline chose Essex Environmental, Inc. to provide inspection services and that the petitioner was one of twelve inspectors assigned to the project. George McLachlan further states:

[The petitioner’s] spread contained the Sheepscot River (one of the State of Maine’s listed Atlantic Salmon streams). In addition to wildlife restrictions, numerous other unique and difficult challenges awaited our construction teams.

* * *

[The petitioner] was an integral component of our inspection team. He provided innovative technical solutions to our dewatering problems and contributed greatly to the clean-up and restoration phase of the spread that he was responsible for.

Stephen Roberge, professional civil engineer and consultant to the State of Maine Department of Environmental Protection (DEP), states:

I worked professionally with [the petitioner] during the 1999 construction season on the Maritimes & Northeast Pipeline Project. My role was that of a consultant to the Maine DEP as a State environmental oversight inspector during the construction phase of a difficult linear pipeline project. [The petitioner] was an integral part of the team that was charged with the protection of Maine’s natural resources.

* * *

[The petitioner] was entrusted by his employer with devising and supervising the construction of erosion control mechanisms in Waldo County. One particularly challenging location was named Patrick Mountain and it represented the highest peak on the 200-mile project. Prior to the arrival of a hurricane in October, this mountain’s soils were exposed and vulnerable due to the recent laying of pipe and a lack of vegetation for stabilization purposes. [The petitioner] devised an erosion control system designed to prevent mudslides into the adjacent valley...

Michael Parker, Environmental Specialist, Maine Department of Environmental Protection, states that he “actively worked with [the petitioner] during the Maritimes and Northeast Pipeline project.” Michael Parker further states:

[The petitioner] employed his professional training as a hydrologist to solve numerous demanding erosion and hydrology problems in addition to the complex issues surrounding stream and wetland crossings. The resolution of these issues allowed construction to conclude on schedule and within the project budgetary constraints.

Kendall Dilling, Environmental Advisor, TransCanada Pipelines, states:

I have known the petitioner since 1998 when he was hired as an environmental inspector for TransCanada Pipelines. My role as an environmental manager was to directly supervise his work and to be a source of support from my office in Calgary, Alberta.

* * *

[The petitioner] utilized his specialty in soils and groundwater issues to expertly advise our contractors regarding appropriate construction procedures based on sound environmental practices. In addition, he ensured contractor compliance with complex Federal, Provincial and local environmental regulations, a role that required frequent interaction/negotiation with government oversight officials.

* * *

[The petitioner's] level of technical skill and applications engineering is well beyond that ordinarily encountered in Environmental Inspectors and Project Managers. His knowledge of the extraordinarily complex regulation governing pipelines and how to apply them effectively in given technical and environmental situations is a unique and valuable skill. Most significantly, it contributes significantly to the completion of pipeline projects in a timely and professional manner.

We note here that objective qualifications, such as knowledge of complex environmental regulations and engineering applications, are amenable to the labor certification process. As stated previously, 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.

Amy Davis, Senior Environmental Scientist, Natural Resources Group, Inc., addresses the labor certification issue, stating:

I have been asked to explain that while environmental inspectors such as [the petitioner] are highly regarded and eagerly sought in the pipeline construction industry, it is highly unusual for contractors to make permanent job offers to environmental inspector professionals.

That is indeed the case. The nature of the pipeline industry is that it is project based. In other words, individual projects are sponsored by major oil and gas transmission companies, often in collaboration with other sponsors.... The structure of the industry is such that individual environmental inspectors such as [the petitioner] work for contractors who bid on specific jobs. Those jobs are limited in scope and term.

CIS (Citizenship and Immigration Services) acknowledges that there are certain occupations wherein individuals are contracted to provide services on specific projects for a predetermined period, and thus would have no U.S. employer to apply for a labor certification. While this fact will be given due consideration in appropriate cases, the inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner must still demonstrate that the self-employed alien will serve the national interest to a substantially greater degree than do others in the same field. *See Matter of New York State Department of Transportation, supra.*

We note here that the experts offering letters of support consist entirely of individuals with direct ties to the petitioner. Beyond demonstrating that the petitioner has played a valuable role in supervising local pipeline sections or "spreads" (his assignment as part of an overall pipeline construction project), there is no evidence to show that the greater environmental regulatory industry views the petitioner's individual work as particularly significant. The petitioner must demonstrate not only that he is a particularly well-qualified

environmental inspector, but that his work has had a national impact beyond the scope of duties intrinsic to his profession. In this case, the general message of the letters seems to be that because the pipeline industry requires trained professionals to provide environmental inspection services, the petitioner serves the national interest by virtue of possessing the required training and skills.

The director requested further evidence that the petitioner had met the guidelines published in *Matter of New York State Department of Transportation*.

In response, the petitioner submitted various photographs from inspection projects to which he was assigned and five journal articles that cite scholarly articles co-authored by the petitioner during his master's program. The petitioner's co-authorship of published materials as a graduate student may demonstrate that his research efforts yielded some useful and valid results; however, it is apparent that any article, in order to be accepted for publication must offer new and useful information to the pool of knowledge. It does not follow that every researcher whose work is accepted for publication has made a significant contribution to his field. Publication, by itself, is not a strong indication of impact in one's field, because the act of publishing an article does not compel others to read it or absorb its influence. Numerous independent citations, however, would provide firm evidence that other researchers have been influenced by the petitioner's work. Their citation of the petitioner's work demonstrates their familiarity with it. If, as in the present case, there are few citations of an alien's work, suggesting that that work has gone largely unnoticed by the larger research community, then it is reasonable to question how widely that alien's work is viewed as being noteworthy. It is also reasonable to question how much impact — and national benefit — a researcher's work would have, if that research does not influence the direction of future research. The limited number of citations presented by the petitioner in this case (5) is not sufficient to demonstrate that his findings have significantly influenced his field.

Also submitted was a letter from U.S. Senator Carl Levin stating: "I trust that [CIS] will carefully review all evidence submitted by [the petitioner] in support of this application and give it every consideration under the law."

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 acknowledged the intrinsic merit and national scope of the petitioner's work, but found that the petitioner's own contribution does not warrant a waiver of the job offer requirement that, by law, attaches to the classification that he chose to seek. The director indicated that the evidence presented did not show that the petitioner would "serve the national interest to a significantly greater degree than others in his field who hold similar qualifications." The director specifically noted the absence of "letters of support from experts in the field beyond the petitioner's circle of acquaintances."

On appeal, counsel states that "[t]he keystone of the [national interest waiver] request was eight (8) letters of attestation from experienced and respected experts." Counsel argues that the letters clearly satisfy the eligibility factors set forth in *Matter of New York State Dept. of Transportation*. In support of the appeal, the petitioner submits four additional witness letters (three of these are from individuals who previously offered letters of support).

Michael Parker states: "I am of the opinion that [the petitioner's] performance in the Maritimes and Northeast Pipeline demonstrated a degree of performance significantly above that of the 13 inspectors on that project and significantly above that generally encountered in the industry."

Carey Johannesson states: "I am writing this supplemental letter to state, clearly and unequivocally, that [the petitioner], in the course of discharging his duties as and Environmental Inspector, demonstrated a degree of expertise significantly above that ordinarily encountered in the environmental regulatory industry."

Kendall Dilling states: "I have no hesitancy in stating that [the petitioner] demonstrates a degree of expertise significantly above that ordinarily encountered in environmental inspectors and environmental project managers generally. My original letter was intended to convey that message."

James Thompson indicates that he recently served as an Environmental Project Manager "on a Florida Gas Transmission Pipeline project in Florida, southern Alabama, and Mississippi." He states that he was able to closely observe the petitioner, who was working as a FERC third-party compliance monitor on that same project. In the same manner as the preceding three witnesses, Mr. Thomson indicates that the petitioner's "performance was exceptional and significantly above that exhibited by other monitors and significantly above that which [he] would ordinarily expect to encounter."

We note here that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered." As has been observed in *Matter of New York State Dept. of Transportation*, a plain reading of the statute and regulations shows that aliens of exceptional ability and members of the professions holding advanced degrees are generally required to present a job offer with a labor certification at the time the petition is filed, and only for due cause is the job offer requirement to be waived. Clearly, exceptional ability in one's field of endeavor, by itself, does not compel CIS to grant a national interest waiver of the job offer requirement. As stated previously, the issue here is whether the petitioner's contributions in the field are of such unusual significance that he merits the special benefit of a national interest waiver, over and above the visa classification sought. In seeking the additional benefit of a national interest waiver, the petitioner in this case must provide evidence demonstrating that he has significantly influenced the environmental regulatory industry.

Counsel states: "[CIS] questioned the value of [the witness] letters by characterizing them as originating from [the petitioner's] circle of colleagues.... The attempt to denigrate the value of these letters because the individuals are 'acquainted' with [the petitioner] almost defies logical response." Letters from those who have directly monitored or worked with the petitioner certainly have value, for it is those individuals who have the most direct knowledge of his specific contributions to a given pipeline project. Here, the director's observation that all of the witnesses have close ties to the petitioner is not intended to cast aspersions on the integrity of the witnesses; the director specifically indicated that the letters accompanying the petition were from "a number of distinguished persons." Nevertheless, these individuals became aware of the petitioner's work because of their close contact with the petitioner; their statements do not show, first-hand, that the petitioner's work is attracting attention on its own merits, as we might expect with industry contributions that are especially important.

Counsel calls attention to a letter from Mark Wright of TransCanada Pipelines and an e-mail from Donna Slade of Enbridge Pipelines expressing appreciation for the petitioner's "excellent work" and thanking him "for doing a great job." We acknowledge that these letters were not solicited in support of the petition, but it

remains that they originated from individuals assigned to directly monitor projects involving the petitioner. These letters do not show that the petitioner's work is viewed throughout the greater environmental regulatory industry as being unusually significant.

While the witness letters indicate that the petitioner is a respected and knowledgeable environmental inspector, his ability to impact the industry beyond the pipeline project sectors to which he has been directly assigned has not been demonstrated. For example, the witnesses do not indicate the extent to which the petitioner's work has influenced other environmental inspection projects throughout the country (aside from the particular pipeline sections he directly was responsible for). Nor does the record show, for example, that the petitioner has often been requested to provide training or guidance to other environmental inspectors or that his individual methods have attracted notice throughout the industry as a whole. Most notably, the record contains no official, direct letter of support from FERC, the federal agency for which the petitioner provides environmental compliance monitoring services, explaining his individual benefit to the national interest.

For the reasons set forth above, the petitioner has not established that his past accomplishments set him significantly above his peers such that a national interest waiver would be warranted. While the petitioner has plainly earned the respect and admiration of colleagues from the particular pipeline projects to which he has been assigned, it appears premature to conclude that the petitioner's work has had and will continue to have a nationally significant impact on the work done in his industry. In sum, the available evidence does not establish that the petitioner's past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner.

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 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 project or 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.