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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAR 22 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.

for *Mari Johnson*
Robert P. Wiemann, Director
Administrative Appeals Office

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

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 the associate director of the Globalization Research Center (GRC) of the Research Corporation of the University of Hawaii (RCUH). At the time he filed the petition, the petitioner was a doctoral student at the University of Hawaii (UH). 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 the classification sought, 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 with progressive post-baccalaureate experience equivalent to 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 has worked for UH in various capacities since 1994. Witnesses on the UH faculty discuss the petitioner's various roles, and praise his abilities. For instance, Professor [REDACTED] employed the petitioner as a program coordinator at UH's Disaster Management and Humanitarian Assistance program from August 1999 to March 2000. Prof. [REDACTED] states that the petitioner "proved to be an outstanding organizer."

Regarding the petitioner's earlier career, [REDACTED] director of Media Relations at Dewe Rogerson Japan, states:

[The petitioner] established JDW Associates at the end of 1987, basically acting as a public relations consultancy to a number of leading companies, both Western (e.g., Coca-Cola, Amway) and Japanese (including Fuji Bank, Asahi Television). That fact that he was able to build up such an impressive list of clients in such a short period of time is a testimony to his remarkable talents as a writer and as a film producer, to his skills as an intermediary between the East and the West, and to [his] familiarity with Japanese culture and his unique experience as the first foreigner hired by Dentsu PR Center, Japan's biggest PR company.

Other witnesses who worked with the petitioner in Japan attest to the petitioner's skill in public relations positions in that country. The petitioner formerly headed JDW Associates, a public relations firm specializing in "audio-visual production." The petitioner has written several published pieces regarding this work. The petitioner has also written a number of articles as a journalist for *Marubeni Shosha* and other publications.

The GRC, where the petitioner occupies a prominent role in creating the *Living In A Global World* television series, appears to be staffed mostly, if not entirely, by UH graduate students. From the witness letters, it is clear that the petitioner was instrumental in establishing the GRC, although the impact of this entity has not been established. While the petitioner produces a monthly television program at the GRC (which, counsel states, is broadcast on "The Research Channel, on Webcast, and on public access TV"), the record offers no information about the viewership or impact of this program. The GRC is part of the Globalization Research Network (GRN), a cooperative endeavor with groups at three other United States universities. Richard Dubanoski, dean of the UH College of Social Sciences, states "we hope [the GRN] will serve as a model for other inter-institutional cooperative projects in the United States." He does not discuss any past accomplishments of the GRN, stating only that it "has gotten off to a very good start."

The director instructed the petitioner to submit evidence to meet the guidelines published in *Matter of New York State Dept. of Transportation*. In response, the petitioner submits evidence of his continuing endeavors. Counsel observes that the petitioner continues to produce television programs, write scholarly articles, and speak at professional gatherings, and that the petitioner “represented the Globalization Research Center . . . as co-sponsor of an international conference.” Counsel states “[t]hese achievements, accomplished since the filing of this application, clearly reflect that [the petitioner] is contributing substantially more to his field than most others.” A petition that is not approvable at the time of filing cannot be made approvable by subsequent developments, pursuant to *Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998), and *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971). Furthermore, simply listing the petitioner’s activities establishes that he is an active researcher, but it does not demonstrate that the petitioner’s contributions significantly exceed those of others in the same field, as there is no basis for comparison.

Counsel observes that the petitioner was among the first foreigners to experience significant success as a public relations consultant in Japan. Given that the petitioner is no longer a public relations consultant, the significance of this past career is not entirely clear, except in the general sense that it has provided the petitioner with international business experience. Counsel cites lengthy excerpts from previously submitted witness letters. These witnesses are all either the petitioner’s long-time acquaintances and colleagues, or officials of the University of Hawaii where the petitioner recently finished his doctorate and now seeks continued employment. These letters are not *prima facie* evidence of significant impact beyond the petitioner’s employers and clients.

The director denied the petition, stating that the petitioner has not established that his “work has been of substantially greater significance than that of others in his . . . field.” The director noted the close ties between the petitioner and the various witnesses, and cited the lack of evidence of significant wider impact. The director also found assertions regarding the potential future impact of the petitioner’s work at the GRC to be “hypothetical.”

On appeal, the petitioner submits copies of previously submitted documents, apparently duplicating the entire record of proceeding. There appears to be no new evidence in this redundant three-inch-thick submission. The petitioner also submits a brief from counsel, which consists mostly of quotations from previous briefs and witness letters. The brief contains little discussion of the grounds for denial. Word-for-word repetition of arguments and claims set forth before the issuance of the denial notice does not serve to address the grounds for denial. In a new argument, counsel contests the director’s finding that the petitioner’s impact is “hypothetical.” Counsel cites previous exhibits establishing the petitioner’s experience in the field, as well as witness letters praising the petitioner’s skills and his accomplishments in previous careers as a public relations consultant and journalist, but the appellate submission offers no concrete evidence that the petitioner, as a top official of the GRC, has had a demonstrable impact beyond that of other university-based researchers in economics, political science, and other fields related to globalization.

The petitioner has not shown that his work at the GRC stands out from the work of other researchers studying globalization and related subjects. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). As the director has observed, the petitioner’s reputation at the time of filing was largely limited to the University of Hawaii and the companies for whom the petitioner has worked in the past.

The record demonstrates that the petitioner has been successful and productive in a useful field of endeavor, but the evidence submitted does not demonstrate that the petitioner’s impact in that field has been, and will likely continue to be, of a caliber that warrants a special exemption from the job offer requirement which, by law, 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.