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U.S. Citizenship
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Services

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BS



FILE: [Redacted]

Office: NEBRASKA SERVICE CENTER

Date: MAY 06 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:

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, 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. The petitioner seeks employment as a senior specialist engineer at the Boeing Company, a position he has held since August 2000. 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's résumé indicates that, at Boeing, he has "[d]eveloped JAVA & ICAD programs for generic Wing design for 747-X and Sonic Cruiser to reduce design time" and "[d]eveloped HTML, DGI & PERL code for web-launch of stress analysis programs." The petitioner has previously worked for several companies including various automobile companies including DaimlerChrysler and Toyota.

The petitioner submits several witness letters. [REDACTED] formerly manager of the Knowledge Based Engineering Group at Boeing, and subsequently Boeing's engineering manager for the "new Sonic Cruiser airplane program," states:

[The petitioner] had been involved in several different programs during his time here at Boeing. He has worked on the 747-X Generic Wing Design program. . . . The objective of the Generic Wing Design was to reduce time and effort involved in the Structural Analysis of new Wing Geometry for different Airplane Configurations. His work involving ICAD (Computer Aided Design software with Knowledge Based Engineering tools from KTI industries) and JAVA programming for FAST process (Finite Element Aeroelastic Tool) has helped the structures team at Boeing to reduce the design cycle time by a considerable amount. . . .

The Boeing Company is developing a faster, longer-range airplane known as the Sonic Cruiser. . . . This will revolutionize the airline industry.

[The petitioner's] innovative approach in developing Generic Design tools for the Sonic Cruiser . . . will have far reaching benefits for The Boeing Company, in the development of new airplanes and maintaining its competitiveness in world markets. Affordable lightweight airframes are key to successful aircraft programs. Using the ADVISOR software, structural trade studies that once took months can now be completed in days and at a greater level of fidelity. . . .

I believe that his contributions are of great importance to the success of the KBE group.

Jamie E. Tollon, manager of Aerospace Operations at Delta Tooling, states:

[The petitioner] belongs to an extremely small percentage of skilled professionals, who have demonstrated outstanding contribution[s] in the automotive and aerospace industries in the United States. . . .

I am familiar with [the petitioner's] professional interests for the last 6 years through our professional discussions as members of [the] Society of Automotive and Aerospace Engineers. . . .

[The petitioner's] work in The Boeing Company in Toronto, Canada . . . resulted in immense cost savings for 737 and 747 programs for Boeing.

During our professional discussions a [REDACTED] I was impressed by his innovative approach to problem solving in issues related to design and manufacturing of engineering components. [The petitioner] made tremendous contribution[s] to the design team [at] Daimler Chrysler, Auburn Hills, Michigan in the launch of the new vehicle programs, by being an excellent mentor and trainer for engineers during the implementation of the Virtual Product Modeler . . . which helps cut down costs for design process and helps industries achieve competitiveness in world markets.

At Toyota Motor Manufacturing Canada, Cambridge, Ontario, Canada, [the petitioner] was employed as a Senior Engineer. His achievements include valuable engineering contributions to the successful launch of the new vehicle programs (Solara and Corolla). He made several design changes in collaboration with suppliers in [the] US and Japan, demonstrating excellent project management skills. One of the most outstanding contributions [the petitioner] made was that he trained several engineers in the Quality Control Engineering group in Geometric Dimensioning and Tolerancing (an American Society of Mechanical Engineers Y14.5 standard). This helped the Quality Control Engineering group better implement closer dimensional control of the manufactured components.

[The petitioner was also] the leader of the In-System damage reduction program at Chrysler Canada (now Daimler-Chrysler), resulting [in] considerable cost savings in rework.

The record also shows that the petitioner volunteers as a technical reviewer on the Transactions Selection Committee of the Society of Automotive Engineers (SAE). The task of a technical reviewer is to review papers submitted to SAE for conference presentations and consideration for awards.

The witnesses have demonstrated the petitioner is a dedicated and proficient mechanical engineer, who has undertaken numerous tasks and projects on behalf of his various employers. The initial documents and letters, however, do not demonstrate that the petitioner has served the national interest to a greater extent than would be expected of a dedicated and competent mechanical engineer. Therefore, the director requested further information to establish that the petitioner meets the guidelines published in *Matter of New York State Dept. of Transportation*. In response, the petitioner has submitted a new witness letter and various documents regarding his professional credentials.

The petitioner states that he has also submitted a “[d]ocument indicating my innovative research in the field of Robotics will serve US national interest,” but the record contains no such document. The petitioner’s résumé includes his own statement about the claimed importance of his research into robotic hands, but this claim is not supported by objective, independent documentary evidence. The petitioner had previously submitted a

copy of his published article about robotic hand research. This material shows that the petitioner has conducted research in the area, but it is not self-evident that the petitioner's robotics research is especially important or significant compared to robotics research conducted by others. The petitioner does not explain how his robotics work relates to his employment at Boeing.

The new letter is from Professor [REDACTED], chair of the Department of Aeronautics and Astronautics at the University of Washington, who states:

Following a careful examination of [the petitioner's] professional dossier I have come to the conclusion that his application for permanent residency has great merit. The following remarks support his case:

1. . . . [The petitioner] provides professional technical advice to other Boeing employees and also to Boeing suppliers throughout the United States. . . . [The petitioner's] work in structural mechanics is very helpful in improving the quality and performance of Boeing aircraft.
2. . . . [The petitioner's] engineering knowledge and expertise clearly have prospective national benefit, and can be regarded of superior quality, well above what is ordinarily encountered among others in the field.
3. [The petitioner's] expertise and skills are critically needed in the Boeing Company to maintain global competitiveness, especially in the area of Aircraft Structural Design and Competitiveness. His previous contributions to knowledge-based engineering have resulted in reducing the design and analysis time (and hence the cost) required for the development of new airplanes. . . .
4. Due to a surplus declaration at the Boeing Company, there is no shortage of skilled workers there. Indeed, there are more qualified people available than there are open positions. . . . However, [the petitioner] is a very important asset to Boeing and U.S. competitiveness in the global aerospace market. . . .
5. [The petitioner's] professional accomplishments to date in the area of Product Engineering and Technology at Boeing, and in similar capacities at previous employers, provide ample evidence that his future contributions toward decreasing design time and improving productivity will be of great value to Boeing in the development of more fuel efficient airplanes, such as the 7E7 and its derivatives.

The director denied the petition, acknowledging the intrinsic merit of the petitioner's work, but finding that "the scope of the petitioner's engineering services within this major corporation [Boeing] is so attenuated at the national level as to be negligible." The director also stated that the petitioner has not satisfied the third prong of the national interest test described in *Matter of New York State Dept. of Transportation*.

The director acknowledged that the record contains evidence that indicates exceptional ability, but "aliens seeking a waiver of the job offer requirement must demonstrate a prospective benefit significantly higher than that required of aliens claiming exceptional ability." The director concluded "the petitioner has had successful engineering employment with leading companies, but the evidence does not establish that an exception from the job offer requirement presents a national benefit so great as to outweigh the national interest inherent in the labor certification process."

On appeal, the petitioner indicates that he will submit a brief and/or further evidence within 30 days. The only correspondence that the petitioner has submitted during that time consists of letters requesting that the

AAO “carefully review the appeal.” Several months later, Representative Jay Inslee wrote to the AAO to state that the petitioner requests review of the evidence and letters in the record.

The petitioner’s appeal submission includes a lengthy letter, addressing various elements of the director’s decision. The director had observed that “the record lacks official corporate documentation from the Boeing Company corroborating facts about [the petitioner’s] specific contributions.” On appeal, the petitioner states that Boeing did not petition for him, but rather he filed the petition on his own behalf. Therefore, the petitioner asserts, “[a] letter from The Boeing Company . . . is neither needed nor warranted.”

While it is true that an alien can self-petition for a national interest waiver, in this instance the petitioner’s claim is inseparably tied to his work for Boeing. Because the petitioner’s claim to serve the national interest relies heavily on claimed benefits to the Boeing Company, it is not unreasonable for the director to note the relative lack of corroboration from that company. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner adds that he has submitted a letter from a Boeing employee, specifically [REDACTED] whose letter is quoted further above. Mr. [REDACTED] clearly enthusiastic about the petitioner’s work, but his statements do not demonstrate that the petitioner’s work is considerably more significant or influential than that of other engineers at Boeing, or that the petitioner’s work is truly in the national interest, rather than primarily in Boeing’s interest.

There are vague assertions that the petitioner’s work has cut costs, reduced design times, and improved efficiency, but these are arguably the goals of every competent mechanical engineer. The record lacks objective evidence to show that the petitioner is personally responsible for improvements that greatly exceed those of other similarly employed engineers. Listing the petitioner’s accomplishments does not intrinsically demonstrate their significance.

The petitioner observes that, as a nonimmigrant, he is restricted in the range of duties that he can perform for Boeing. This is presumably true of all nonimmigrant workers at Boeing. Employment at Boeing is not presumptive grounds for a waiver. Even if this argument were a valid one, the petitioner has not shown that Boeing desires to assign him to more sensitive work and would do so if the petitioner were a permanent resident or United States citizen.

The petitioner asserts that he attended a well-regarded college, the India Institute of Technology, that is comparable to the Massachusetts Institute of Technology in terms of reputation and prestige. We do not dispute the quality of the petitioner’s education, but attendance at a prestigious college should not guarantee approval of a waiver, any more than attendance at a lesser institution should weigh heavily against such a waiver. The waiver must rest on the petitioner’s individual achievements, rather than his general background or assertions regarding his promise or potential. In this instance, the petitioner’s background shows that he is well-trained and highly regarded, but not that he stands out from his peers to a degree that warrants the special benefit of a national interest waiver. Employee evaluation forms in the record show that the petitioner has, in the past, received ratings that are above average but below the top rating. Employee ratings are only one part of the picture, but the national interest waiver is not intended for all “above-average” workers.

The petitioner asserts that the director’s decision contains faulty or contradictory reasoning. For instance, the director noted Prof. Bruckner’s statement that “there is no shortage of skilled workers” at Boeing, and concluded “this tends to support the case for rather than against labor certification.” The director’s logic here

is largely the opposite of that expressed in *Matter of New York State Dept. of Transportation*, which indicates that a *shortage* of qualified workers, rather than a *surplus*, tends to argue in favor of labor certification. The assertion that Boeing has a surplus of qualified engineers would, if true, tend to suggest that Boeing would have difficulty obtaining a labor certification on the petitioner's behalf. (We note that this claim lacks corroboration from Boeing officials.) Still, it is not automatically in the national interest to approve waivers for every worker who cannot obtain a labor certification. Such a policy would effectively make the statutory job offer requirement meaningless, because anyone who could not obtain a job offer would simply obtain a waiver instead. 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). Waivers based on a worker surplus would deprive the job offer requirement clause of purpose and meaningful effect.

The petitioner has shown that he is a competent and valued mechanical engineer for a major corporation, but the record lacks objective, detailed evidence to show how his work has been, and will continue to be, of substantially greater benefit to the United States than that of other qualified engineers.

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.