



U.S. Citizenship
and Immigration
Services

[REDACTED]

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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER

Date:

OCT 29 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

PUBLIC COPY

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 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.¹

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 requirement 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 Ph.D. in Agricultural Engineering from Purdue University. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue 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 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 the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

¹ The director also concluded that the petitioner had failed to submit the Form ETA-750B required by 8 C.F.R. § 204.5(k)(4)(ii). The petitioner overcomes this concern on appeal by submitting the form.

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 Dep't. of Transp., 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 director did not contest that the petitioner works in an area of intrinsic merit, agricultural engineering, and that the proposed benefits of his work, controlling air pollution from livestock facilities, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

The petitioner relies on four reference letters and his publication history. All of the petitioner's references attest to the importance of the petitioner's project and assert that there is a shortage of scientists performing the type of research in which the petitioner is engaged. This office has already rejected such arguments in a precedent decision. In *Matter of New York State Dep't. of Transp.*, this office stated:

[I]t cannot be argued that an alien qualifies for a national interest waiver simply by virtue of playing an important role in a given project, if such a role could be filled by a competent and available U.S. worker. The alien must clearly present a significant benefit to the field of endeavor.

With regard to the unavailability of qualified U.S. workers, the job offer waiver based on national interest is not warranted solely for the purpose of ameliorating a local labor shortage, because the labor certification process is already in place to address such shortages.

Id. at 218. Dr. Richard Gates, one of the petitioner's professors during his bachelor's studies and current collaborator, also asserts that the petitioner has "already made a significant impact." Dr. Gates, however, does not identify a specific impact or explain its significance to the field.

Dr. Albert Heber, the petitioner's Ph.D. advisor at Purdue University and current collaborator, asserts that the petitioner's results with odor emission rates in swine nurseries "have provided valuable understanding of

agricultural emissions.” Dr. Heber further states that the petitioner is “leading the measurement of particulate matter” using the U.S. Environmental Protection Agency (EPA) approved Tapered Element Oscillating Microbalance (TEOM). According to Dr. Heber, TEOM is “being used for the first time in the U.S. for source measurements in livestock environments.” Finally, Dr. Heber asserts that the petitioner’s research has “provided crucial information to the study of aerial pollutant emission” by a six-state study aimed at reducing the impact of such emissions, helping to “shape and improve” the study.

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 he seeks. 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 219, n. 6.

The above letters are from the petitioner’s collaborators and immediate circle of colleagues. While such letters are important in providing details about the petitioner’s role in various projects, they cannot by themselves establish the petitioner’s influence over the field as a whole.

The petitioner did provide two letters from more independent sources. Dr. [REDACTED] is the National Program Leader, Agricultural Engineering, at the Cooperative State Research, Education and Extension Service (CSREES) at the U.S. Department of Agriculture (USDA). Dr. [REDACTED] indicates that he manages the grant issued to Purdue University that funds the petitioner’s research. Dr. [REDACTED] asserts that the petitioner’s involvement is important to the project based on his knowledge and experience. These are factors that could be enumerated on an application for labor certification.

Dr. D. Bruce Harris, a senior environmental engineer with the National Risk Management Research Laboratory (NRMRL) of the EPA, asserts that he cooperated with the petitioner’s laboratory at Purdue University. He provides the most specifics regarding the petitioner’s work on EPA and USDA funded projects. Dr. Harris explains that the EPA sought the assistance of the petitioner’s laboratory at Purdue University in developing an understanding of agricultural ammonia based on that laboratory’s results measuring odor, dust and gas emissions from livestock buildings. Dr. [REDACTED] asserts:

[The petitioner] has developed the site specific sampling systems needed to accurately gather samples within the animal production facility. These methods have been adopted by a 6-state consortium to gather such data from a variety of animal housing structures.

Dr. [REDACTED] concludes that the petitioner is a key scientist for three projects, two funded by the EPA and another project funded by the USDA.

While the letters from Dr. Hegg and Dr. [REDACTED] are somewhat more independent, both include the following concluding paragraph:

Despite his very impressive research accomplishment up to now, in my opinion, he is only at the beginning of a very promising and productive scientific career in a field that is closely linked to both economic and health/environment concerns of this nation. By granting [the

petitioner] permanent residency and allowing him to stay in the U.S., the country will benefit from his continued efforts to improve the U.S. environment and make agriculture industries more productive and efficient. His work is clearly in America's national interest. I therefore strongly recommend that [the petitioner] be approved of his immigration petition based on his outstanding contribution to the science of agriculture environment,² pollution control³ and to the United States as a nation.

While the letters appear to contain original signatures reflecting that Dr. Hegg and Dr. [REDACTED] attested to the statements in the letters, the use of boilerplate language suggests that they did not compose the letters themselves. We note that Dr. Harris' letter is not even on EPA letterhead. Thus, the evidentiary value of these letters is somewhat diminished.

As noted by the director, the record lacks evidence that the petitioner has been listed as key personnel for any grant application. On appeal, the petitioner asserts that it is "normal" to omit the petitioner's name under key personnel on grant applications due to the large size of the proposal. Whatever the reason for the omission, it remains that the petitioner is unable to support his claim to be a key member of the research team with a grant proposal listing him as such.

Moreover, the petitioner's publication history does not support the claims of an impact in the field suggested in the reference letters. The petitioner provided a list of twelve articles published as of the date of filing and submitted six of those articles. As noted by the director, however, the publication of one's results is inherent to the field of research. The record contains no evidence that independent researchers in the field have cited any of the petitioner's articles.

On appeal, the petitioner states:

Since we are only reporting our findings in the peer-reviewed scientific journal or reports to the agencies, it is less likely to find any evidence of my contribution other than others referencing the findings as numbers and methods used. Also, it usually takes at least two to three years to have the papers published, and there will be another few years to see our papers cited.

The petitioner's list of publications reveals that the petitioner's work has not simply been included in government reports, but has been distributed in journals in the field, some published as early as 2000. The record, however, contains no evidence that other, independent researchers in the field are citing these papers. Thus, the petitioner's publication history is not indicative of an impact on the field as a whole. Moreover, the record lacks letters from several (or any) state agricultural departments attesting to their reliance on the petitioner's methodologies.

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

² The letter from Dr. [REDACTED] replaces "environment" with "its environment impact."

³ The letter from Dr. [REDACTED] replaces "pollution control" with "the potential for pollution control."

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.