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FILE: EAC 03 082 51374 Office: VERMONT SERVICE CENTER Date: JUN 14 2005

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:



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 (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

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 postdoctoral fellow. 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) . . . 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 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 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:

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.

It is settled that the petitioner works in an area of intrinsic merit, mechanical engineering, and that the proposed benefits of her work, improved theoretical models relating to optical fibers, would be national in scope. The director’s conclusion at issue is whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

In evaluating this question, the director stated the following:

The record references the beneficiary’s receipt of prizes or awards for academic excellence which do not qualify as a major nationally or internationally recognized prize or award because they are awards for academic achievement, not for outstanding achievements in her field.

* * *

It is noted that the record does not contain material about the importance of the beneficiary’s contribution in professional or major trade publications or other major media.

* * *

It is generally expected that an individual whose accomplishments have garnered national or international acclaim would have received recognition for her accomplishments well beyond the circle of his [sic] personal and professional acquaintances.

* * *

Of greater probative value in deciding if a waiver is warranted for this highly restrictive employment-based visa category (as originally intended by Congress and enforced by the strict historical interpretation of the term “national interest” by the Administrative Appeals Office) is the inclusion of substantial, independent primary evidence such as letters of support from leading government officials, national independent experts, major awards, news articles discussing the national importance of the beneficiary’s work, etc.

On appeal, counsel asserts that the director used a standard for a higher classification, aliens of extraordinary ability pursuant to section 203(b)(1)(A) of the Act, and implies that the petitioner in this matter need only establish exceptional ability.

We concur with the director that the petitioner must establish some impact on the field as a whole, which necessarily requires recognition beyond her immediate circle of colleagues. *See Matter of New York State Dep’t of Transp.* 22 I&N Dec. at 219, n. 6. Moreover, counsel’s implication that the petitioner need only demonstrate exceptional ability to qualify for the national interest waiver is not supported by the statute or case law. Rather, as the petitioner is an advanced degree professional, the issue of exceptional ability is moot. As the exceptional ability classification normally requires a labor certification, establishing eligibility for that classification in addition to being an advanced degree professional does not, by itself, warrant a waiver of the labor certification requirement. *Id.* at 218-219. Moreover, contrary to counsel’s assertions on appeal, the director’s analysis in this matter contains considerable language not found in the director’s decision relating to another petition filed by this petitioner in her own behalf seeking a higher classification.¹

Nevertheless, nothing in *Matter of New York State Dep’t of Transp.* 22 I&N Dec. at 215, the only precedent decision issued by this office regarding the national interest waiver, indicates that, for the benefit sought, the petitioner’s impact on the field as a whole must rise to the level of “national or international acclaim.” In addition, that case does not suggest that “major nationally or internationally recognized awards” and published materials are necessary evidence to demonstrate that a waiver of the labor certification requirement is warranted. Rather than considering whether the *claimed* student awards are “major nationally or internationally recognized awards,” a consideration more appropriate to the classification sought is that academic performance, measured by such criteria as grade point average, cannot alone satisfy the national interest threshold or assure substantial prospective national benefit. *Matter of New York State Dep’t of Transp.* 22 I&N Dec. at 219, n. 6. Further, rather than consider whether the petitioner has submitted published materials about herself and her work, a consideration more appropriate to the classification sought is whether the petitioner has demonstrated that she is frequently cited. While citations may not rise to the level of published materials about the alien as required for aliens of extraordinary ability, frequent citation can suggest an impact on the field as a whole. The director made no specific finding as to whether the petitioner had been cited.

In discussing the standard for evaluating whether the alien will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications, the AAO indicated that it clearly must be established that the alien’s past record justifies projections of future benefit to the national interest. *Id.* at 219. The footnote to this statement provides that the petitioner must demonstrate a past history of

¹ Counsel submits a copy of that decision on appeal, making it a part of the record of proceedings in this matter.

demonstrable achievement with some degree of influence on the field as a whole. 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.

Therefore, this matter will be remanded for consideration of the evidence under the appropriate standard. In all cases the petitioner must demonstrate specific prior achievements that establish the alien's ability to benefit the national interest. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.