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U.S. Citizenship
and Immigration
Services

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FILE:

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Office: NEBRASKA SERVICE CENTER

Date: AUG 04 2008

IN RE:

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:

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) 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 is a certified public accountant (CPA) who seeks employment as a Senior Associate at KPMG LLP. 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:

(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 the regulatory equivalent of 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 (Commr. 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.

We also note 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” in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

Much of the petitioner’s initial submission consists of copies of certificates and other documents establishing that the petitioner is a qualified and credentialed CPA. The petitioner also submitted a “Summary of Work Experience” listing numerous “Engagements Completed” in the United States, the Philippines and Indonesia, including such tasks as audits for the United States Census Bureau, Levi Strauss (Philippines) Inc., Motorola Communications Philippines, Inc., and other major clients. The “Summary of Work Experience” amounts to a list of claims about the petitioner’s experience, rather than documentary evidence of that experience.

An October 24, 2003 letter from [REDACTED] Chairman of the Policy Advocacy Committee of the Asian Bankers’ Association, acknowledged the petitioner’s “help in the preparation of the **Report on the Status of the Convergence of Domestic Accounting Standards to International Financial reporting Standards (IFRS) Among APEC Economies**” (emphasis in original). A copy of a February 20, 2004 letter to the petitioner from [REDACTED] President of the Association of Certified Public Accountants in Public Practice, indicates that the petitioner was one of five members of that association’s Committee on Auditing Standards for 2004. The petitioner stated that, as a member of the Committee on Auditing Standards, he

“provide[d] technical assistance in the revision of the Philippine Standards of Auditing.” The petitioner did not explain how this past activity translated to prospective benefit to the United States. The petitioner did not, for example, establish that any governing body for CPAs in the United States had expressed a similar interest in the petitioner’s services. The petitioner simply stated that he seeks a national interest waiver, without explaining how he qualified for it.

On May 23, 2007, the director issued a request for evidence, instructing the petitioner to submit documentary evidence to meet the guidelines set forth in *Matter of New York State Dept. of Transportation*.

In response, the petitioner asserted that his work will be national in scope because, since his 2005 arrival, he had “rendered professional services to . . . entities which are domiciled in six (6) different States, as well as the District of Columbia.” With the exception of one client in California (Solectron Corporation), all of the clients were in the Mid-Atlantic region, spanning from Pennsylvania to Virginia.

To establish the impact and influence of his work, the petitioner submitted a partial copy of a paper presented at a 2004 conference in Chile. The paper contains a footnoted reference to a report prepared by the petitioner and several others for the Asian Bankers’ Association. This evidence establishes some national impact of the petitioner’s work at that time. Because this evidence predates the petitioner’s current employment in the United States, however, it does not demonstrate the national scope of his present or future work.

The petitioner submitted a copy of a November 16, 2004 letter from _____ Human Resources Manager at KPMG LLP in Montvale, New Jersey. The letter was originally prepared in support of an L-1B nonimmigrant visa application, but its description of the petitioner’s position is relevant here. _____ stated:

As a Senior Manager, the beneficiary is responsible for directing multiple audit engagements and providing guidance to audit teams on the control design and process control reviews. In this regard, he plans and performs audits of financial statements of various clients. He is the “auditor-in-charge” of KPMG audit clients and is responsible for the development, planning, and supervision of various audit engagements, audit fieldwork, and statutory reporting. . . . In addition, the beneficiary is responsible for identifying and assessing risk, evaluating internal controls, and preparing appropriate financial statements. The beneficiary is responsible for ensuring audit engagements are conducted accurately, efficiently and timely adhering to KPMG’s methodologies. The beneficiary is involved in preparing and supervising financial requirements for audit engagements for clients.

_____ indicated that the petitioner is well-versed in KPMG’s proprietary audit procedures, but she did not explain how the petitioner stands apart from other CPAs who conduct audits for their clients. (Because the letter was not written in support of a national interest waiver claim, _____ did not address issues directly relating to the waiver.)

The director denied the petition on August 2, 2007, stating that the petitioner had not established that his intended work in the United States will have national scope, or that the petitioner’s accomplishments

sufficiently distinguish him from others in the field. On appeal, the petitioner cites his work with publicly-listed companies, and states that “the financial performance and financial condition of these companies are . . . not only national in scope but can even be global as well.” The petitioner makes similar arguments about the financial health of other clients, including government entities. The petitioner does not establish that he is personally responsible for the financial performance or financial condition of such entities (as opposed to gauging their performance and condition through audits).

The petitioner asserts that, while in the Philippines, he participated in “drafting a report on the status of convergence of domestic accounting standards to International Financial Reporting Standards among the various economies under the Asia Pacific Economic Cooperation (APEC) umbrella.” The record does not demonstrate that the petitioner has been or is likely to be involved in a similar effort in the United States, nor does the record show that a comparable overhaul of United States accounting methods is imminent. The national interest waiver is a means to secure future benefits to the United States, not a reward for a given alien’s past achievements overseas.

The previously submitted letter from [REDACTED] indicated that the petitioner’s work would primarily consist of auditing, albeit at a high level. The director did not contest the intrinsic merit of such work, but it remains that one does not qualify for a waiver simply by fulfilling one’s job duties. The petitioner has not established that he would serve the national interest to a substantially greater extent than would another qualified worker in the same position at KPMG LLP, performing audits for the same clients.

It is possible for the work of a CPA, under some circumstances, to have national scope. The petitioner’s past work standardizing accounting practices may so qualify. But the petitioner has not shown that his prospective work, in the position offered by KPMG LLP, will be national in scope. The impact of work with any individual client is generally contained within the client organization, and such isolated impact does not become national in scope simply because of the geographical distribution of the clients. Even then, the record indicates that the petitioner’s clients are heavily concentrated in the mid-Atlantic region of the United States. The AAO therefore affirms the director’s finding that the petitioner has not shown that his intended work is national in scope.

The AAO further affirms the director’s finding that the petitioner has not established that he, individually, will likely benefit the national interest to a substantially greater extent than would another qualified worker in the same position. The petitioner has, at best, established that he is an experienced CPA who is well qualified for the position offered. Being qualified for a given position, however high-ranking, does not automatically qualify a given alien for a national interest waiver.

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.