

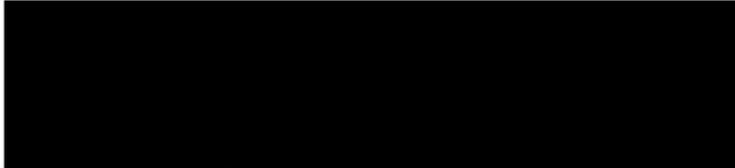
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U.S. Citizenship
and Immigration
Services

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FILE:

EAC 06 129 51329

Office: VERMONT SERVICE CENTER

Date:

FEB 20 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:



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.

A handwritten signature in cursive script that reads "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont 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 seeks employment as an information systems consultant, specifically a senior principal consultant at Oracle USA, Inc. 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 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. In the denial notice, the director focused on the third factor.

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.

In a statement submitted with the initial filing, the petitioner discussed his work and its importance:

In my six years sojourn in the U.S., I engaged in delivery technology enhanced process improvements to public sector agencies, educational institutions and corporations. While implementing ERP applications, I helped my clients identify shortcomings in their operations and defined business processes that improved their performance and enhanced profitability. These initiatives helped to improve systems integrity and security.

The clients I have served have greatly advanced their corporate governance structure and raised their level of risk management and capabilities to withstand disaster recovery and business continuity. Furthermore, the solutions I proffered have yielded tremendous efficiencies in my clients’ Customer Relationship Management. This quantum leap in individual organizations adds up to the economic growth of the United States. . . .

I composed a strategic initiative on how Oracle Corporation can bring more value to businesses and public enterprises, which will lead to a phenomenal thrust in the entire U.S. economy. . . . [I was] offered . . . employment as Senior Principal Consultant in January 2006.

I will be responsible for the design, configuration and development of financial applications software particularly for the Public Sector agencies and government institutions. . . .

I am positioned to deliver to Oracle Corporation's clients concepts that encompass business activities across planning & budgeting, consolidation, analysis and monitoring thereby giving organizations' management the ability to execute measure and act upon results. Through the technology I will be configuring, organizations would be able to regain control of their businesses, increase their credibility and remove barriers throughout the enterprises. Furthermore, I will help the client organizations I serve to define and manage risks and controls that will enable them to comply with the Sarbanes-Oxley (SOX) Acts of 2002 statutory reporting standards thus preventing the incidences of fraud and business failures.

The petitioner also asserts that he will benefit the United States through "sports development initiatives for youths" (the petitioner is a volunteer youth soccer coach) and "contribution to adult rehabilitation." The petitioner also wrote an article containing general financial advice published in *One Voice*, a periodical described as "A Christian Publication" and the content of which suggests local circulation in the Detroit area. The petitioner claims no occupational credentials in these areas, which appear to represent the petitioner's volunteer activities. The national interest waiver is associated with what the statute defines as an *employment-based* immigrant classification. National interest arguments must relate to the alien's employment activities. An alien who is otherwise ineligible for the waiver cannot establish eligibility by demonstrating a history of community volunteer activities, or by pledging to engage in such activities in the future. The AAO will limit consideration to the petitioner's occupational/professional achievements.

The petitioner submitted copies of documents showing his academic and professional credentials. A résumé submitted with the petition indicates that the petitioner's work since 2000 has consisted of a succession of contract projects. What follows is the petitioner's description of his current work as of the filing date:

[REDACTED] (Contract) (01/2006 – to present)

Role – Project Manager / Functional Lead

- Requirements gathering, mapping and gap analysis to determine appropriateness of Oracle Financial Applications
- Adv[is]e management on the business process variations that would bring about effective corporate governance
- Configuration of Financial Application modules – GL, AR, iExpense, EPB, Assets, Projects, Supply Chain suites
- Project coordination and reporting

When the petitioner filed the petition in March 2006, he indicated that he became an employee of Oracle Corporation in January 2006. In a later submission, he stated that he joined Oracle in April 2006, after he

filed the petition. A letter from [REDACTED], Human Resources Representative at Oracle, indicates that the petitioner “began employment on May 23, 2006.” The petitioner’s earlier consulting work involved Oracle products.

Two witness letters accompanied the initial filing. [REDACTED] President of Ingeniana Management Consultants, stated:

In the last eighteen months, I have worked closely with [the petitioner] on a project for a major client. The client owns a large plot of land near a major metropolitan center and was desirous of commercial development of a portion of it to provide some income to cover the costs of running the remaining portion. [The petitioner] developed the parameters for the initial market survey that allowed us to analyze several options that would meet the client’s needs. . . .

Based upon our analysis, a decision was made by the client to pursue a Fee Fishing business as the first commercial enterprise for the property and with identified follow on options for the future. [The petitioner] continued to work with Ingeniana as we designed the man made lake and the supporting structures for the business. He also contributed technically to the development with money saving ideas. He also contributed to the Business Plan that was developed for the project that will be used both with the lenders and as a road map for implementation.

We anticipate that the actual building of the lake and the supporting structures will begin in mid 2006. . . . I look forward to working with [the petitioner] on this phase of the project.

The identity of the “major client” is not clear from [REDACTED] general description. The activities described in [REDACTED]’s undated letter do not correlate closely to the tasks the petitioner described in his résumé with regard to his most recent work with NSF International and Oracle. The petitioner’s own description of his work and goals, written in early 2006, did not mention any upcoming work regarding the construction of an artificial fishing lake.

[REDACTED] letter attests to the petitioner’s skills but does not establish that the petitioner stands out from his peers to an extent that would justify a national interest waiver.

[REDACTED], a Senior Manager with Deloitte Consulting, stated:

I have worked with [the petitioner] for several years and have witnessed outstanding insight and excellence with which he proffers business solutions.

Most outstanding among his achievements was the solution he designed around Grants Accounting at the George Washington University, DC where we worked together for several months. The solution was adopted by Oracle Applications in later releases of the software which is widely used today to provide enhanced security for intellectual property. . . .

[The petitioner] has a result oriented 'out-of-the-box' approach to issue resolution which ha[s] led to establishment of solution options that are especially valuable in today's security heightened business culture. Multiple times he initiated radical solutions to solving critical issues which enhanced the Oracle solution to Internal Security on business applications, helping to maintain the sanctity of our markets and optimizing investor returns and portfolio performances.

clearly has a high opinion of the petitioner and his skills, but the letter quoted above contains no specific information about the petitioner's past work or how it has influenced the field. Client satisfaction does not imply eligibility for the national interest waiver.

On July 7, 2006, the director issued a request for evidence, instructing the petitioner to submit further documentation to meet the guidelines set forth in *Matter of New York State Dept. of Transportation*. The director stated that the petitioner had "not shown that his work has already had a national or far-reaching impact," and that "superior ability is not by itself sufficient cause for a national interest waiver."

In response, the petitioner stated that "Oracle Software applications are the most widely used . . . world-wide," and that he has worked for a variety of clients including universities, public school systems in major cities, government agencies and large corporations. The petitioner highlighted a project with the Rhode Island Department of Transportation, in which he claimed to have been "significantly instrumental to solving a seven months puzzle of reconciling their core sub-ledger balances with their General Ledger, thus enabling them to close their financial records at year-end (which was behind schedule)." The petitioner stated: "I reckon it's only going to be a matter of time for me to be a globally renowned Oracle Solution Architect."

With respect to the widespread use of Oracle products and applications, the reputation of the employer does not imply that its employees qualify for the waiver. There is nothing in the statute or regulations to suggest that certain employers are so highly regarded that their workers are presumptively exempt from labor certification or the statutory job offer requirement. The issue of eligibility rests on the merits of the individual alien, whose subjective and self-serving prediction that he will one day be "globally renowned" cannot settle the question. We must examine the qualities and accomplishments that lead the petitioner to hold such expectations.

The petitioner submitted copies of various materials relating to his work, for example, electronic mail messages regarding a trip to Dublin, Ireland, to work with a pharmaceutical company there, and a "Customer Satisfaction Report" showing that the Rhode Island Department of Transportation strongly approved of the service it received from the petitioner. These documents establish that the petitioner is a valued Oracle employee who delivers satisfactory services to Oracle's clients. Professional competence, however, is not grounds for a national interest waiver. The materials submitted do nothing to distinguish the petitioner from other consultants at Oracle or other firms that offer similar services.

The petitioner submitted copies of various professional certificates he had earned. The petitioner documented his membership in the Project Management Institute, the Information Systems Audit and Control Association,

and the American Institute of Certified Public Accountants, and his passing score on the examination to become a Certified Information Systems Auditor. The petitioner submitted no independent evidence of the significance or importance of these credentials.

The petitioner claimed to be the author of four “peer-reviewed articles.” Peer review is a process by which an article intended for publication is submitted to independent peers with knowledge in the relevant subject area, who then offer comments, criticism, and recommendations as to whether or not the article should be published. None of the petitioner’s submissions show any indicia of peer-reviewed articles. They appear, rather, to be internal Oracle documents, akin to reports and memoranda, and thus appear to have been prepared in the normal course of the petitioner’s duties.

The director denied the petition on November 15, 2006, stating: “Beyond documentation that was created expressly for the purpose of supporting the petition, the record contains little evidence that would clearly delineate the beneficiary’s claimed impact on the field.” The director concluded that the petitioner had not shown that his “individual contributions at Oracle are beyond the capabilities of any number of trained professionals in his field.”

On appeal, counsel states that the director “failed to sufficiently consider the significance or impact of petitioner’s work, services, and contributions to renowned and universally recognized corporations, governmental institutions, and the society.” The burden is on the petitioner to show that such contributions have been made, and establish the value of such contributions. In this proceeding, the petitioner has done little more than identify high-profile clients.

Counsel asserts that the director “did not consider petitioner’s membership in distinguished associations in the field for which classification is sought, which require outstanding achievements of their members as adjudged by recognized national or international experts.” This language comes from regulations relating to a different immigrant classification (alien of extraordinary ability, under section 203(b)(1)(A) of the Act). That aside, membership in a highly exclusive association could be evidence of the petitioner’s reputation in the field. In this instance, however, the petitioner has not shown that any of the associations to which he belongs require outstanding achievements of their members as adjudged by recognized national or international experts. The petitioner has simply submitted copies of membership cards and certificates, with no further elaboration or explanation, and counsel now appears to fault the director for failing to assume that these memberships are of great significance in the petitioner’s field.

Counsel argues that the director disregarded *Matter of New York State Dept. of Transportation* and relied on inapplicable assertions, for instance asserting that the petitioner had not shown “that the projects would have to be suspended without his presence.” It is true that the precedent decision does not include such requirements, but the director’s inapplicable assertions can be excised without affecting the outcome of that decision.

Counsel then claims that “a project was indeed suspended because of petitioner’s absence or need to perform another task.” As evidence of “how invaluable petitioner was not only to the project but Oracle Consulting,” counsel cites a previously submitted copy of an electronic mail message between two Oracle officials,

indicating that the petitioner's ongoing training would delay (by one week) his travel to Dublin to work with a pharmaceutical company. The message concludes: "I hope [redacted] is willing to wait for [the petitioner]...he's worth the wait." As with so much else in the record, this message shows that the petitioner is a valued Oracle employee, but it does not distinguish him from other information systems consultants or show that it is in the national interest to exempt him from the job offer/labor certification requirement that typically applies to information systems consultants at Oracle and other companies.

Counsel then lists the petitioner's past projects, but fails to establish that these projects were of unusual significance or importance or that the successful completion of such projects would have been beyond the reach of most in the petitioner's occupation. Counsel also repeats the petitioner's original claim that his non-work-related activities, such as his efforts as a volunteer soccer coach, "positively impact the society at large." At best, this information establishes that the petitioner is professionally competent and civic-minded. While these traits are to be encouraged, they do not qualify the petitioner for a special immigration benefit over and above the classification he seeks. Counsel has argued that the petitioner has played a pivotal role in nationally important projects, but the record is devoid of credible, independent evidence to support such claims. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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.