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U.S. Citizenship
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Services

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FILE:

[REDACTED]
EAC 05 121 51643

Office: VERMONT SERVICE CENTER

Date:

JAN 08 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, 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 an alien of exceptional ability in the sciences. The petitioner seeks employment as an engineer. 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 an alien of exceptional ability, 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.

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.

The intrinsic merit of engineering is not in dispute in this proceeding. The director found that the petitioner had not met the remaining prongs of the national interest test in *Matter of New York State Dept. of Transportation*.

In a statement accompanying the initial submission, the petitioner stated:

I have been involved in Engineering most of my life and has given the Mechanical Exceptional abilities to understanding advanced manufacturing technology equipment and Electrical and Electromechanical Engineering environment, also has given me the opportunity of being an expert who has the knowledge and skills acquired by means of education. . . . All experience obtained have a greater economic to multiplier effect in the industrialist sector in the United States of America, because the technology-intensive manufacturing sector leads the United States in productivity growth. This is the standard key to increasing the standard of living, to produce the next generation of goods faster and cheaper and cleaner than ever before.

I'm confident that my exceptional abilities are useful in benefit of the United States of America. My commitment is continue to work towards optimizing the industry in world-class industrial environment, and most importantly, continued learning and experience in organization, engineering to maintain the productivity and professionalism and serve to this purpose or cause.

(*Sic.*) The petitioner's initial submission included letters from former employers, attesting to his experience as an engineer. While complimentary, the letters do not demonstrate that the beneficiary stands out in his field. The letters appear to be the type of recommendation letters that employers typically provide to competent and well-regarded former employees.

The petitioner also submitted copies of certificates reflecting his participation in various training exercises and courses. Like the employers' letters, the certificates attest to the petitioner's professional competence but do not establish eligibility for the national interest waiver. Special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Matter of New York State Dept. of Transportation* at 221.

On October 31, 2005, the director issued a request for evidence, stating "it is unclear how the beneficiary's experience and abilities set him apart from other highly qualified researchers [*sic*] in the field." The director requested documentation to show the petitioner's impact on his field. In response, the petitioner submitted copies of previously submitted materials. In addition, the petitioner submitted copies of letters from Philips Lighting, as "Evidence . . . that I am currently performing in [an] area of substantial Intrinsic merit serving as an Engineer in the Development, design and Innovation center." The letters, dated November 3 and 4, 2004, establish that the petitioner accepted a job offer "for the position of Engineer II," and later submissions demonstrate that the petitioner worked for the company, but gainful employment does not translate into eligibility for a national interest waiver.

Furthermore, the letters from Philips appear to be "form" letters routinely issued to prospective new hires. The accompanying documents indicate that the petitioner would be a "Project Leader," but do not distinguish the petitioner from countless other engineers employed by major corporations such as Philips.

The petitioner submitted additional materials with this description:

Request from an interested agency, large companies, New York Employment Center, SME Education and Research Community, Career Center, Technical Recruiter, and Society of Engineers.
Evidence shown that my services, experience and abilities are sought by the above Professional's organizations

Two letters (respectively dated April 25 and June 17, 2005) from the New York State Employment Center begin: "Below is a new job posting in which you may be interested. If you are qualified for and interested in this job, please call the New York State Employment Center." These letters do not suggest that the New York Employment Center had taken the initiative to recruit the petitioner. Rather, it appears that the petitioner had registered with the Center in order to be apprised of job openings. The purpose of these particular letters was to

advise the petitioner of opportunities with “[a] leading international manufacturer of wood panel products” that sought a “Mechanical Engineering Manager,” and a Binghamton company that sought an “Analog/Digital Design Engineer.”

Similarly, a printout from the ASQ (American Society for Quality) Career Center (<http://careers.asq.org>) appears to be a job announcement forwarded to the petitioner, detailing an opening for a “Plant Quality Engineer” at Parker Hannifin.

A short electronic mail message from “a technical recruiter in New York City who works primarily with Financial companies” offers no clue why the recruiter approached the petitioner. The recruiter does not claim any detailed knowledge of the petitioner’s past experience; he stated that any response would have to include details of the petitioner’s “financial experience.”

Another electronic mail message, from Career-Rocket.com, acknowledged the petitioner’s response to a job announcement, and advised the petitioner: “Your application is being evaluated against the requirements for this position. If we determine there is a possibility of a match . . . we will contact you.” The message, dated September 10, 2004, is among the oldest dated documents in this group of exhibits. There is no evidence of further contact. The message is not, as the petitioner described it, evidence that his “services . . . are sought.” It is, rather, evidence that the petitioner was sending out job applications as early as September 2004, whereas other documents show that he was still looking for a position over ten months later. The documented duration of the petitioner’s job search is not strong evidence of demand for his services.

An electronic mail message from the SME (Society of Manufacturing Engineers) Education and Research Community appears to be a bulk mailing, soliciting attendance at a June 2005 international conference. A form letter from the SME Education Foundation solicited “a charitable gift” to support the Foundation’s efforts. How this letter has anything to do with the petitioner (apart from the fact that the petitioner is an engineer and SME member) is never explained. Another letter from the SME is less general. James Schroeder, Chair of the SME Production Systems and Management Techniques Technical Group, stated on April 1, 2005:

Recently you updated your SME member record to include the Production Systems and Management Techniques Technical Group. As chairman of this committee, I am writing to invite you to join us by becoming an active participant.

. . . It is my belief that your interest will significantly strengthen the committee in meeting its objectives.

Identical language, substituting only the name of the committee, appears in an April 14, 2005 letter from Dick Matheny of the SME Product Design Technical Group. The shared language suggests that the SME routinely issues standardized letters to individuals who express an interest in particular groups or committees.

An undated letter shows that the petitioner joined the ASQ’s Advanced Manufacturing Forum, but like the SME Technical Groups, the record contains no information regarding the minimum standards that one must meet to join the group.

All in all, the documents described above appear to be fairly routine, and the petitioner appears to have exaggerated their significance. Many of the documents simply indicate that the petitioner is actively seeking employment. Others suggest that the petitioner is active in his field, but this does not entitle him to a waiver of the job offer/labor certification requirement that typically applies to engineers.

Similarly, copies of performance evaluations, while favorable, do not qualify the petitioner for the national interest waiver. Congress structured the law in such a way that engineers – even engineers of exceptional ability - are normally subject labor certification. The burden is on the petitioner to show not only that he is a qualified engineer, not only that he is a very good engineer, but that a waiver of the job offer requirement would serve the national interest.

Finally, the petitioner submitted evidence that he had sent inquiries to Cornell University, with the intention of continuing his master's degree studies there. A degree from a particular university, however prestigious, does not qualify one for the waiver; it follows, of course, that simply looking into applying for admission to such a university has no weight in the petitioner's favor.

The director denied the petition on October 11, 2006, stating that the petitioner had failed to demonstrate "national accomplishments" or otherwise establish eligibility for the waiver. On appeal, the petitioner states:

I have dedicated and gained the ability to the investigation of higher levels technologies based on my 15 years of experience with leading world-wide companies. It is for this reason that I applied and have been accepted to Cornell University one of the top ten universities . . . for completing my Master Degree in Engineering. . . .

Being a bilingual person I would be able to serve and to teach the future generations all my knowledge and my experiences I have had in the global community. In a way I hope to be hired for one of the many highly technological projects in coordination with Cornell University, Government of the United States and Lockheed Martin. Lockheed Martin, located in Oswego New York is developing projects for the United States in national security.

. . . I can be an asset to the local technical industries in this area within the United States.

I have now been forced to delay continuation of my master's degree at Cornell University where I was taking course work with the professors in the field of engineering.

The director did not dispute that the petitioner "has exhibited technical expertise in his field and that he is a dedicated professional engineer." There are, however, many talented and dedicated engineers. The petitioner, on appeal, does not distinguish himself from these others except to state that he is bilingual. The petitioner has not shown how his fluency in two languages increases his impact as an engineer. We also note that, because English is the native language of only a minority of the world population, it stands to reason that a significant number of intending immigrants who speak English are, themselves, bilingual. Therefore, bilingualism does not distinguish the petitioner from other alien engineers seeking immigration benefits.

The petitioner's assertion that he *may* one day work with the government and Lockheed Martin on national security projects is speculative, and carries no evidentiary weight. **There is no evidence that either the government or Lockheed Martin has actively sought such a collaboration with the petitioner.**

Regarding the petitioner's recent graduate studies, even if studying at Cornell was enough to qualify him for the waiver (which it is not), the petitioner was not yet a student there when he filed the petition. Not until he responded to the request for evidence did he indicate that he had even inquired about applying for admission to Cornell. The admission letter from Cornell is dated August 15, 2006, nearly a year and a half after the petition's March 16, 2005 filing date. The beneficiary of an immigrant visa petition must be eligible at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971).

The petitioner does not explain why he has "been forced to delay continuation of [his studies] at Cornell." Denial of the present immigrant petition would not directly affect the validity of an F-1 or other nonimmigrant status. Even if the denial of this petition had directly precipitated the interruption of his studies, this would not be a factor in the petitioner's favor. Completing his master's degree is certainly in the petitioner's interest, but it does not follow that it is in the national interest of the United States.

Upon review, the documentation submitted by the petitioner appears to be barely sufficient to qualify him for the underlying immigrant classification. That same evidence does not begin to distinguish him from other engineers to an extent that would justify the special added immigration benefit of a national interest waiver. While national scope is possible within some branches of the engineering profession, the record does not contain sufficient specific information for a finding in the petitioner's favor in this regard. The job announcements and job offers documented in the record, for instance, represent a considerable range of duties. Some of these positions would have little discernible effect outside of the employing companies, whereas others have a wider reach. At best, the AAO concludes that the petitioner's field does not preclude the possibility of national scope.

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.