



U.S. Citizenship
and Immigration
Services

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FILE:

LIN 05 201 50970

Office: NEBRASKA SERVICE CENTER

Date: MAR 03 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 AAO will dismiss the appeal.

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. The petitioner seeks employment as a Chinese-Spanish translator. 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 sought, but 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 for the underlying immigrant classification. We will revisit this issue elsewhere in this decision. The sole issue raised in the denial 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.

In a statement accompanying the initial submission, the petitioner described his work:

From 1977 to 1992, I was engaged in diplomatic interpreter work for fifteen years. At first, I worked in the Latin American Bureau of the Central Foreign Liaison Department. Then in 1986, I was accepted into the Chinese People’s Institute of Foreign Affairs (CPIFA). . . .

My specialty was to research the Latin-American political and economic situation, provide reports to the national leadership organization and certain research organizations. . . .

So many times I took the post of the interpreter or the recorder for national senior leaders of China, including The P.R. China President Yang Shangkun, Premiers Zhao Ziyang and Li Peng, National People’s Congress Chairman Wan Li . . . and so on. In the diplomatic field of China, only outstanding diplomatic officers can take the post of interpreting and recording for national supreme leaders of China, and also for the post of accompanying foreign senior leaders during their visits in China. These works strongly implied my level of excellence and intelligence. . . .

From 1992 to 2002 . . . I successively served in several companies. . . .

[M]y ability for proficiently control many languages played the very major role. . . .
Consequently my interpret job is thought on stand out. . . .

I cannot say whether I can supply ideas for U.S. diplomacy and the international situation, though I had my experiences of research international issues in many years. Also I don't mention whether my business experiences of 10 years do have the opportunity to display in USA. Only for skilled grasping three languages – the English, Spanish and the Chinese, I believe the America is the right place for my abilities. This is because, as everyone knows, that the better communications between people is very important.

(*Sic.*) The petitioner added that his spouse, a physician and acupuncturist, has several Latino clients who require the petitioner's services as a translator at her clinic. The petitioner did not claim that this work is national in scope; rather, he asserts that, lacking permanent resident status, he is reluctant to take on jobs of greater scale, many of which would require international travel. The petitioner stated that his spouse has filed an immediate relative immigrant petition on his behalf.¹

The petitioner submitted several witness letters with his initial filing. Most of the letters date from 2003, two years before the filing of the present petition, and all the letters were originally submitted to support an earlier petition that the petitioner had filed in 2003.² Several of these letters are from the petitioner's former professors at Beijing University of Foreign Studies. For example, Professor discussed the petitioner's diplomatic career, but offered no evidence that the United States Department of State seeks the petitioner's services as a diplomat. Prof.'s only comment about the petitioner's future prospects is the observation that Spanish teachers are in demand at American universities. The record does not establish the petitioner's credentials as a language teacher (which is not the same thing as a translator). Other professors praised the petitioner's expertise as a translator and diplomat, but offered no specific information as to how the petitioner would benefit the United States beyond the general assertion that the petitioner possesses valuable skills.

, the petitioner's former university classmate and an "Alternate Observer to the Organization of American States (OAS) at the Embassy of the People's Republic of China in Washington DC," described the petitioner's diplomatic career, stating:

As far as I know, after [he] graduated, [the petitioner] was engaged in China's foreign affair organizations as the Spanish translator and the officials for 15 years. He had gone abroad as

¹ That petition, receipt number LIN 02 226 51832 was approved on March 30, 2007. The alien petitioner concurrently filed a Form I-485 adjustment application, receipt number LIN 07 253 53271, that is currently pending at the Nebraska Service Center. The alien petitioner has a second A-number, , associated with the adjustment application.

² The director denied the earlier petition, receipt number LIN 03 226 51723, on April 4, 2005. The petitioner appealed that denial ,and the AAO dismissed the petitioner's appeal on July 19, 2006.

the Chinese diplomat for two times. Many times he used to work for the senior leaders of our country, as a interpret or recorder, as well as the foreign senior leaders, including presidents, premiers, and speakers and so on. Also many times he single-handed accompanied with the important foreign guests to visit around many cities of China as a Spanish translator and an official representative of our country both.

(*Sic.*) As noted above, the petitioner entered private business after 1992. Some of the witnesses are individuals who have worked with the petitioner during this time. [REDACTED] general manager of DCH S.A. Argentina, stated that the petitioner “made himself so valuable to our company” with “his language and social skills.” [REDACTED] director and representative agent of Wenzhou Atlantic Leather Chemistry Ltd., Argentina, cited figures regarding demand for Chinese translators, and stated that the petitioner “frequently helped the local Chinese people as a Spanish translator and a business consular [*sic*].”

Another witness, [REDACTED] is an acupuncturist with no demonstrated expertise in translating. [REDACTED] discussed the petitioner’s career, and asserted that “persons who can directly carry on the communication between Spanish and Chinese are extremely rare.”

The petitioner’s initial filing does little more than establish his credentials and offer the general assertion that his language skills could be useful. Therefore, on October 4, 2005, the director informed the petitioner that it could not suffice for the petitioner simply to list his accomplishments or qualifications. The director stated that the petitioner must submit evidence to establish “contributions to the field of translation which others in the field, preferably with whom [the petitioner had] never studied or worked, recognize as having influenced the field.”

In response, the petitioner stated: “I have filled a blank in some field for US. (Without me, the Chinese to Spanish and Spanish to Chinese translation service in the American Translators Association would be blank. Also Midwest Association of Translators and Interpreters is the same situation.)” The petitioner submitted no evidence to support these claims, although the petitioner stated that he had written to the American Translators Association (ATA) and was awaiting a response. The petitioner did not explain why being the only Chinese/Spanish translator available to those associations should qualify him for a national interest waiver. The scarcity of a given skill set is not necessarily a determining factor for the waiver.

On January 9, 2006, the director issued a second request for evidence, instructing the petitioner to submit the response (if any) that the petitioner had received from the ATA. The director also requested “additional evidence that attests to [the petitioner’s] contributions to the field of translation or interpretation.” The director noted that “character references” cannot suffice in this regard.

In response, the petitioner submitted a letter from ATA Executive Director [REDACTED], who stated that the petitioner “is one of our 9,500 members of ATA. I would like to stress that we currently have only two members listed in our online directory for the language pair of Chinese to Spanish. [The petitioner] is one of them. He is also the only one listed in this language pair in the Midwest Association of Translators and Interpreters, an ATA chapter.”

The petitioner also submitted a letter from [REDACTED], Manager of Diners Professional Translation Center, who stated that he hired the petitioner to translate “a twenty-six page Spanish document into Traditional Chinese” after having “a hard time finding a competent translator for this project.” [REDACTED]’s business is located in Hong Kong, and yet he was able to engage the petitioner’s services thousands of miles away in Indiana. The success of this project, despite the distances involved, sheds little light on why it is in the national interest for the petitioner to work as a translator in the United States. Rather, [REDACTED]’s letter seems to suggest that the petitioner is able to perform prompt and satisfactory work for clients even thousands of miles away. Under these circumstances, it is far from clear how the petitioner’s location is a matter of national interest sufficient to warrant an exemption from immigration requirements that, by statute, typically apply to aliens in the petitioner’s field.

The petitioner submitted examples of translation work he had undertaken for the Northeast Tennessee Valley Regional Industrial Development Association. The materials are in Chinese and English. There is no indication that he translated the materials into Spanish, or that the client required the petitioner’s services to translate its English-language materials into Spanish. This raises another point: the petitioner has not established the extent of the demand for Chinese-to-Spanish translation services or Spanish-to-Chinese translation services in the United States. Low demand may well account for the claimed scarcity of Chinese-Spanish translators in the United States.

The director denied the petition on August 18, 2006, stating that the petitioner had failed to demonstrate his past impact in the field of translation. On appeal, the petitioner describes previously submitted exhibits and discusses various projects. For instance, the petitioner states that he prepared a translation of *The Rules of Procedure of the Inter-American Defense Board* for the Organization of American States. To support this assertion, the petitioner states: “Please refer to the letter of thanking from [REDACTED] the Alternate Observer of The Organization of American States (OAS).” As noted previously, [REDACTED] originally introduced himself as the petitioner’s former university classmate, a pre-existing relationship not mentioned in the new letter. [REDACTED]’s new letter is on the letterhead not of the OAS, or the Inter-American Defense Board, but the Embassy of the People’s Republic of China. The petitioner’s preparation of this translation, therefore, benefited not the United States (which, as an OAS member nation, presumably already possessed the document), but rather his native China.

The record indicates more demand for the beneficiary’s work among clients in China than in the United States, and the petitioner still has not shown how such work is of particular benefit to the United States. The petitioner, instead, continues to stress the relative scarcity of Chinese-Spanish translators in the United States, without any consideration for the possibility that this scarcity may have more to do with a lack of demand than with some higher level of skill or accomplishment necessary to translate between those two languages.

Even if translating between Chinese and Spanish requires skills beyond those of translators of other language pairs, such skills would still be basic traits required of all Chinese-Spanish translators, rather than indicators that Chinese-Spanish translators benefit the United States more than translators of other language pairs.

The petitioner has documented an accomplished diplomatic career, followed by success as a translator for various business clients in China and Latin America. The petitioner has not, however, demonstrated that he

stands out among Chinese-Spanish translators. He has, instead, fallen back on the claim that there are not many other Chinese-Spanish translators to begin with. A shortage of qualified workers in a given field, regardless of the nature of the occupation, does not constitute grounds for a national interest waiver. Given that the labor certification process was designed to address the issue of worker shortages, a shortage of qualified workers is an argument for obtaining rather than waiving a labor certification. *Matter of New York State Dept. of Transportation* at 215, 218.

The petitioner states: "I believe some of the projects I done or doing, are not able to be performed by ordinary people even they also hold multiple-languages" (*sic*). Considering that the crux of the petitioner's waiver claim revolves around his linguistic skills, the AAO cannot ignore many anomalies of grammar and syntax to be found in the petitioner's statements throughout this proceeding.

As is clear from a plain reading of the statute, it was not the intent of Congress that exceptional ability should exempt an alien 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 specialty, 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.

Beyond the decision of the director, another issue prevents approval of the petition. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

As noted previously, the petitioner seeks classification as an alien of exceptional ability. "Exceptional ability" by itself is not sufficient for classification under section 203(b)(2) of the Act. That statute requires not merely "exceptional ability," but rather "exceptional ability in the sciences, arts, or business." The regulations at 8 C.F.R. § 204.5(k) and subsections thereof echo this language. Therefore, not every occupation can qualify an alien under the "exceptional ability" clause; only those that can reasonably be deemed to fall within the sciences, the arts, or business. *See, e.g., United States v. Menasche*, 348 U.S. 528, 538-39 (1955) (stating that every clause and word should be given effect, if possible, in interpreting a statute). Because Congress saw fit to modify the phrase "exceptional ability" with "in the sciences, arts, or business," we must conclude that this modification limits the application of the statute. Otherwise, the "sciences, arts, or business" clause would be without meaningful effect. The petitioner has not claimed or demonstrated that his work falls within the sciences, the arts, or business.

Furthermore, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth six criteria, at least three of which an alien must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business. The director, in this proceeding, never specifically acknowledged the petitioner's satisfaction of more than two of the six listed criteria. The AAO has reversed the director on one of those two holdings, as shown in the AAO's decision of July 19, 2006:

Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought.

The director concluded that the petitioner has met this criterion. We cannot, however, agree with this assessment.

When reviewing the petitioner's employment experience, one must keep in mind experience in jobs that require fluency in both Chinese and Spanish is not necessarily the same thing as experience "in the occupation" of Chinese-Spanish translator.

The petitioner claims to have conducted "translation and research" for the Chinese government in Beijing, at the Central Foreign Liaison Department from July 1977 to August 1986 (interrupted by a position as a protocol secretary at the Chinese Embassy in Santiago, Chile from September 1983 to December 1985), and at the China People's Institute of Foreign Affairs from August 1986 to August 1992.

The petitioner submits employment verification letters from the National Center of Talented Personnel Exchanges of the (Chinese) Ministry of Human Resources. One letter indicates that "[f]rom September 1977 to August 1986, [the petitioner] worked in the Central Foreign Liaison Department, holding the position of the Spanish translator." This is less than nine years; **given** the admitted 27-month interruption to work in Chile, the petitioner spent less than seven years in his position as a Spanish translator.

Regarding the petitioner's work from 1986 to 1992, another letter from the Ministry of Human Resources states that the petitioner "worked in the Chinese People's Institute of Foreign Affairs, holding the position of the Deputy Chief of Asia, Africa and Latin-American Affairs Section." The letter does not indicate that the beneficiary worked as a "translator" during this time, or that Spanish translation occupied a substantial amount of the petitioner's time in the position. While Spanish is widely spoken in Latin America, the same is not true of Africa and Asia. Thus, there is no basis for a finding that the petitioner was, in effect, a full-time translator from 1986 to 1992.

The petitioner submits photographs showing himself with various high-ranking government officials from China and other countries. The petitioner states that several of these photographs show him acting as an interpreter at meetings between Chinese officials and officials from Mexico, Ecuador and Argentina. The photographs establish the petitioner's presence, but not the context. Several other photographs show the petitioner in meetings with delegations from Japan, Nepal, and Australia. The petitioner has never claimed to be a Japanese or Nepalese language interpreter, or to be fluent in those tongues. It appears, therefore, that he was present not as an interpreter, but as an official of the Asia, Africa and

Latin-American Affairs Section. Thus, we have no reason to presume or to conclude that the petitioner accumulated full-time experience as a translator during his time as deputy section chief. The petitioner was clearly a ranking diplomat from 1986 to 1992, but diplomacy involves far more than merely acting as an interpreter.

Subsequent letters show that the petitioner was appointed as a “Commercial Representative in Buenos Aires” for Beijing Engineering Consulting Corporation in 1993; the duties for this position involved “industrial, agricultural, trade, finance, real estate, information consultant services and other activities.” Once again, there is no evidence that the petitioner’s time in this position counts as full-time experience as a translator.

In response to a request for evidence, the petitioner asserts that “[f]rom 1977 to 1992, I was engaged in [the] diplomatic field for fifteen years,” but the petitioner seeks classification as an exceptional translator, not as an exceptional diplomat. Once again, we observe that a diplomat is not simply a translator or interpreter, and experience as a diplomat is not full-time experience in the occupation of a translator.

Based on the above, the AAO finds that the petitioner has not established exceptional ability in his field, or even that the exceptional ability clause, which is statutorily limited to the sciences, arts, and business, even applies to his field.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.