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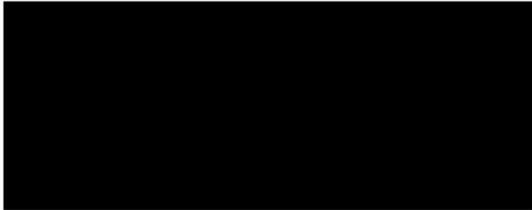
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U.S. Citizenship
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Services

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FILE: LIN 07 094 52746 Office: NEBRASKA SERVICE CENTER Date: OCT 30 2008

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.

Mari Johnson
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 seeks employment as an automotive research 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 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.

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 an introductory letter accompanying the initial filing of the petition, counsel stated that the petitioner’s “research has received high acclaim by the international automotive engineering research community and has lead [*sic*] directly to practical improvements in fuel economy and reduced emissions.” The AAO agrees that the petitioner’s profession has substantial intrinsic merit, and that improvements in fuel economy and the reduction of automobile emissions are national in scope if implemented in mass-produced automobiles (rather than in a handful of non-production prototypes, the impact of which would be minimal). The question to be decided here is whether the petitioner, in serving the above ends, stands out from his peers to an extent that would merit the special, additional benefit of a national interest waiver.

The petitioner submitted partial copies of some of his published writings, technical papers and conference presentations (or tables of contents establishing the existence thereof). These documents establish the petitioner’s productivity in his field, but not his impact. The articles themselves are not evidence of their own influence on the field.

The petitioner also submitted three witness letters. The first letter, attributed to [REDACTED] Vice President of Ricardo UK Ltd., reads in part:

I have been acquainted with [the petitioner] since 2004, when I was involved with him in collaboration with Hyundai Motors. [The petitioner] was an outstanding senior engineer involved in many key projects. . . . In particular, in our recent joint project titled "Fuel consumption study in HMC express bus," he successful achieved obtaining better fuel economy up to 7.8%. The results were presented with presenting at the international congress of the 2006 SAE international, the world's largest automotive professional association. His recent studies in mechanical technology increasing performance and reducing fuel consumption have been well received and highly acclaimed in the vehicle engineering community.

(*Sic.*) The record shows that the petitioner presented a paper at the 2006 SAE World Congress, but it does not show [REDACTED]'s name or the title stated by [REDACTED]. The petitioner's 2006 paper was entitled "Study for Better Vehicle Fuel Economy in a Commercial Vehicle Using Vehicle Simulation," and the credited co-author was [REDACTED]s of Ricardo Consulting Engineers. The petitioner's own list of publications and papers does not show the title "Fuel consumption study in HMC express bus."

A letter attributed to [REDACTED] Director of Global Automotive Business and Automotive Headquarters at SAE International, Warrendale, Pennsylvania, reads in part:

It was my pleasure to meet with [the petitioner] and discuss issues important to the global automotive industry at our recent SAE World Congress. . . .

I have reviewed his resume and several of technical papers. Based upon my review of [the petitioner's] work, it is my opinion that [the petitioner] is an exceptional research scientist in automotive industry who is clearly more highly qualified than other capable researchers in the world. [The petitioner's] outstanding reputation in the automotive field is evidenced by numerous research papers he has published in the scientific journal around the world including journal of SAE, the world's largest automobile technical association. His studies in fuel consumption improvements has been well received and highly acclaimed in mechanical and automotive engineering.

(*Sic.*) A letter attributed to Professor [REDACTED], the petitioner's doctoral advisor at Hanyang University, reads in part:

He is one of the best students that I have ever taught. . . . He has published several excellent papers in the mechanical engineering field in such prestigious publications as the Int. J. of Heat and Mass Transfer, Journal of the America society of Mechanical Engineering, and others. . . . Compared to other engineers he has achieved outstanding results well received in the academic world and with practical impact in the automotive industry. He has developed

excellent reputation in the international automotive engineering community through several international projects with global companies.

(*Sic.*) The director issued a request for evidence on March 14, 2008, instructing the petitioner to submit documentary evidence to show the impact of his published work. The director, noting counsel's claim that the petitioner's research "has [led] directly to practical improvements in fuel economy and reduced emissions," also called for letters "from automotive industry officials who specify the practical improvements which were made" as a direct result of the petitioner's work.

In response, the petitioner did not submit any documentation or statements from the automobile industry. Counsel did not explain or even acknowledge this omission. Instead, the petitioner submitted a copy of a new paper that appeared in April 2007, well after the petition's February 2007 filing date. A letter attributed to [REDACTED], President of the Korean Society of Automotive Engineers, contains the assertion that the petitioner's "engine cooling and ancillary systems techniques clearly result in fuel economy savings of 7.8% utilizing conservative methods of measurement. This research is extremely significant and will lead the way within the industry for compliance with a future of strict governmental regulation world-wide in regards to mandated fuel economy." The record does not show how many automobile manufacturers, if any, have actually adopted this claimed technology and thereby realized the fuel efficiency that the petitioner had projected in computer simulations.

The petitioner submitted a March 2008 letter from the International Biographical Centre, informing the beneficiary of his selection to appear in *2000 Outstanding Scientists 2008/2009*. This development, nearly a year after the petition's April 2007 filing date, cannot retroactively establish the petitioner's eligibility as of the filing date. The beneficiary of an immigrant visa petition must be eligible at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Furthermore, the petitioner did not establish that the directory is generally recognized as a legitimate, widely-used reference in the field, rather than primarily a profit-generating enterprise for its publisher (through the sale of books and awards to the individuals named therein). The publisher's self-serving promotional materials cannot suffice in this regard.

The director denied the petition on June 13, 2008, acknowledging the intrinsic merit and national scope of the petitioner's work but finding that the petitioner had not established that he would serve the national interest to a greater extent than a qualified United States worker. The director stated: "The evidence submitted does not distinguish the petitioner from other postdoctoral researchers." The director noted witnesses' claims regarding the petitioner's work, but found that the record lacked corroborating documentary evidence.

On appeal, counsel protests that the passage in the decision that refers to the petitioner as a "postdoctoral researcher." Counsel notes that the beneficiary "completed his postdoctoral research . . . [in] 1993," and asserts that the director's factual error "casts doubt on the time and effect [*sic*] that was spent in assessment of the record." The references to the petitioner as a postdoctoral researcher appear in one paragraph of the three-page decision. It appears that the director may have relied on "stock" language without ensuring its conformity with the facts of the petition. The director did not state that the petitioner's supposed status as a postdoctoral researcher was a basis for denial of the petition, or that the petition would have been approved if the petitioner was not a postdoctoral researcher. Therefore, the director's error here appears to be harmless.

Counsel stated that the director failed to give due consideration to “the expert opinions of highly credible experts.” The submission of independent witness letters is not an automatic guarantee of approval, and such letters cannot always serve in place of objective, documentary evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Furthermore, the credibility of the letters is not presumed or, for that matter, undisputed. As we have already noted, the letter attributed to [REDACTED] (sometimes spelled [REDACTED]” in the record) refers to the title of a presentation that is otherwise undocumented in the record. We further note that none of the letters bear original signatures, and several of them show grammatical and typographical anomalies.

Regarding the director’s allegation that the petitioner had failed to document one of his more significant claims, counsel states that the director “overlooks the documentation of the study that is right there at Exhibit ‘21.’” Exhibit 21, described as a “2006 technical paper presented to the 2006 SAE World Congress,” is in fact only the cover of that paper. The cover of one of the petitioner’s own technical papers is not objective evidence to support the petitioner’s claims.

In terms of substantiation of the petitioner’s claims, the petitioner, on appeal, remains silent regarding the director’s prior request for evidence to show that automobile manufacturers have in fact adopted the petitioner’s claimed innovations, and have thereby actually realized the substantially increased fuel efficiency claimed in the petitioner’s computer simulations. Given the petitioner’s claims to have had a substantial impact in the field of automotive engineering, it is reasonable to expect evidence to show how the petitioner’s work has affected the design and manufacture of automobiles. The petitioner’s apparent reluctance or inability to supply such evidence necessarily raises doubts as to what sort of impact the petitioner’s work could have had in the field.

The record establishes that the petitioner has considerable productive experience in his field, but the available evidence does not provide adequate support for the claims put forth in support of the petition. 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.