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U.S. Citizenship
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Services

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FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: SEP 02 2008
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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:

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 seeks employment as “a board certified pharmaceutical and regulatory affairs professional.” 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.

On appeal, the petitioner submits a personal statement and a transcript from Temple University. On Form I-290B, Notice of Appeal, the petitioner checked a box indicating “No supplemental brief and/or additional evidence will be submitted,” but the petitioner also underlined the phrase “additional evidence will be submitted.” The petitioner stated: “I am requesting . . . 6-7 months to produce evidence of my diploma from Temple University school of Pharmacy. I owe the school an estimated \$7000 and I expect to pay off the balance by mid or early June 2008. It is then the school will provide me with the diploma.” The director, however, did not deny the petition in whole or in part based on the lack of a diploma from Temple University. Therefore, to suspend adjudication until the petitioner submits this diploma would not alter the ultimate outcome of the petition.

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, but the issue of the petitioner’s degrees bears mentioning briefly. In an introductory statement submitted with the initial filing, the petitioner identified himself as “a member of the Pharmaceutical regulatory affairs

profession holding two advanced degrees.” He continued: “I hold a master of biomedical science from Drexel University School of Biomedical Engineering, Science and Health Systems, class of 2003. I am also anticipating . . . a master of science of pharmaceutical quality assurance and regulatory affairs from Temple University’s School of Pharmacy this summer, 2006.” A May 22, 2006 letter from Temple University’s Office of Graduate Studies indicated that the beneficiary was “currently a matriculated student . . . enrolled in two courses for the first summer session, and two courses in the second summer session.” The letter is dated May 22, 2006, less than three weeks before the petition’s June 9, 2006 filing date. Clearly, the petitioner had not yet completed the coursework for his second advanced degree, and therefore he was at best premature in describing himself as “holding two advanced degrees.”

Notwithstanding the above, the petitioner had earned an advanced degree prior to the petition’s filing date, and his occupation meets the regulatory definition of a profession at 8 C.F.R. § 204.5(k)(2). The petitioner therefore 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 (CIS)] 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 bulk of the petitioner’s initial submission concerned the importance of the pharmaceutical industry, health care, and related issues. This information establishes the intrinsic merit of his chosen field of endeavor. Nevertheless, the submitted documents are general background materials that are not specific to the petitioner (as opposed to others in the same field), and as such cannot suffice to demonstrate that the petitioner qualifies for the special benefit of a national interest waiver. For example, the petitioner submitted news articles about clinical trials of vaccines, but no evidence that he was involved in developing those vaccines or conducting the trials.

The petitioner also established that he is “Regulatory Affairs Qualified” by the Regulatory Affairs Professionals Society. These credentials qualify him to work in his chosen field, but one does not qualify for a national interest waiver merely by being qualified to work in an important field. It is the position of CIS to grant national interest waivers on a case-by-case basis, rather than to establish blanket waivers for entire fields of specialization. *Matter of New York State Dept. of Transportation* at 217.

On April 20, 2007, the director issued a request for evidence, instructing the petitioner to submit documentation specific to the petitioner, for instance establishing his involvement in research projects, or authorship of scholarly publications. The director explained: “You must establish, in some capacity, your ability to serve the national interest to a substantially greater extent than the majority of your colleagues.”

In response, the petitioner stated: “In my field, regulatory affair and clinical research, scholars or experienced industry professionals seldom publish papers. In the field of regulatory affairs and clinical research, success is primarily based on mastery of guiding laws or regulations by the department of health and human services and implemented by the food and drug administration [*sic*].” Familiarity with pertinent statutes and regulations is, without a doubt, essential for success when one’s field involves regulatory affairs. Nevertheless, at issue here is not whether the petitioner is qualified to work in a particular field, but whether he, in particular, qualifies for a waiver of the job offer requirement that, by law, typically applies to aliens in that field. The petitioner’s asserted mastery of what appears to be a rather basic job requirement does not readily set him apart from others in his profession.

The petitioner submitted documentation showing that his was one of 397 research projects displayed on “Research Day 2003” at Drexel University. The petitioner did not explain the relevance of this project (which concerned fluctuating glucose levels in diabetics) to his intended career in regulatory affairs, nor did he show

that his project was in any way distinguished among the nearly 400 others displayed in what appears to have been a campus event.

The director denied the petition on September 14, 2007, stating that the petitioner had failed to “establish that the petitioner’s efforts have been national in scope or that he has had a degree of influence in the field,” or that “the petitioner would serve the national interest to a substantially greater extent than the majority of his colleagues.”

On appeal, the petitioner states: “Due to the broad nature of the pharmaceutical profession, many people have [a] dearth of knowledge on the role clinical research scientist[s] or regulatory affairs professionals play.” The petitioner then describes his “role in the drug development process” and lists reasons why he is “extremely competitive in this field.” Once again, simply being qualified to work in a given profession does not establish eligibility for a national interest waiver. The petitioner appears to qualify for the underlying immigrant classification as a member of the professions holding an advanced degree, but that classification, by law, typically requires a job offer and a petition filed by the intending employer. The petitioner has filed this petition on his own behalf with no job offer, and therefore must show not only that he qualifies for the classification sought, but also that he qualifies for a separate, additional immigration benefit in the form of a national interest waiver. The petitioner has submitted no evidence to show that he, more than others in his field, qualifies for that additional benefit. Rather, the petitioner has listed his own qualifications and asserted, with no evidentiary support, that those qualifications should earn him the waiver.

The petitioner asserts that his two master’s degrees, including one that he finished well after the petition’s filing date, “are by all accounts of immense influence in the field of drug development.” This unsupported claim carries no weight in this proceeding. The petitioner has not provided even a single concrete example to show how he has influenced the field. The petitioner cannot simply declare, by fiat, that a master’s degree influences the field by its very existence. Even if this were so, it would still fail to distinguish the petitioner in any meaningful way from the countless others who have also earned master’s degrees in the same field.

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.