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U.S. Citizenship  
and Immigration  
Services

B36

FILE:

[REDACTED]  
SRC 03 006 54937

Office: TEXAS SERVICE CENTER Date:

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:

[REDACTED]  
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*

~~S~~ Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office 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 or as a member of the professions holding an advanced degree. The petitioner seeks employment as a feng shui specialist. 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 does not qualify for classification as an alien of exceptional ability or as a member of the professions holding an advanced degree, and that the petitioner had 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 that:

(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 requirement 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 petitioner holds a Bachelor's degree in architecture from the Central University of Venezuela. The director concluded that the petitioner did not have an advanced degree. The regulation at 8 C.F.R. § 204.5(k)(2), however, provides that a baccalaureate degree plus five years of progressive experience is equivalent to an advanced degree. The director did not consider whether the petitioner had the equivalent of an advanced degree. While the petitioner did not submit employment letters as evidence of his experience in the field as required by 8 C.F.R. § 204.5(g)(1), he did submit the articles of incorporation of companies in Venezuela suggesting he may have at least five years of experience as an architect. The field of architecture falls within the pertinent regulatory definition of a profession. Similarly, a baccalaureate degree is generally required for an interior designer, indicating that they may also be professionals.

In light of the above, if the petitioner were seeking to work as an architect or licensed interior designer, he might be able to qualify as an advanced degree professional. The petitioner, however, does not seek to enter the United States as an architect or a licensed interior designer. The record does not reflect that he or his U.S. company is licensed in architecture or interior design in Florida as required by Florida State Law. Fla. Stat. Ch. 481.201 et seq. (2000). The petitioner's certification in feng shui strongly suggests that a baccalaureate degree

is not required to serve as a feng shui consultant. In fact, the record lacks evidence that accredited higher education institutions in the United States offer degrees in feng shui. As such, the field of feng shui consulting is not a profession. *See* 8 C.F.R. § 204.5(k)(2). As the petitioner is not a professional, he cannot establish that he is an advanced degree professional.

As the petitioner does not qualify as an advanced degree professional based on the work he seeks to perform in the United States, we must examine whether he qualifies as an alien of exceptional ability.

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. These criteria follow below.

The regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered.” Therefore, evidence submitted to establish exceptional ability must somehow place the alien above others in the field in order to fulfill the criteria below; qualifications possessed by every member of a given field cannot demonstrate “a degree of expertise significantly above that ordinarily encountered.” The petitioner claims to meet the following criteria.

*An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability*

As stated above, the petitioner has a baccalaureate degree in architecture. The record does not sufficiently establish the relation between architecture and feng shui consulting. Thus, we cannot conclude that the petitioner’s baccalaureate degree represents a degree of expertise in feng shui above that ordinarily encountered. As such, the petitioner has not established that he meets this criterion.

*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*

While the petitioner claims to have been incorporating feng shui into his architecture work in Venezuela, the feng shui certificates and media advertisements in the record are dated 1996 or later. Thus, the petitioner has not established that he had been working as a feng shui consultant for ten years as of the date of filing. As such, the petitioner has not established that he meets this criterion.

*A license to practice the profession or certification for a particular profession or occupation*

The director concluded that the petitioner had provided no evidence of a license. The petitioner does not address this deficiency on appeal and we concur with the director that the petitioner does not meet this criterion.

*Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability*

The director concluded that the petitioner had provided no evidence of his income. The petitioner does not address this deficiency on appeal and we concur with the director that the petitioner does not meet this criterion.

*Evidence of membership in professional associations*

The director concluded that the petitioner had provided no evidence of any professional memberships. On appeal, the petitioner lists seven associations of which he claims to be a member. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972), broadened in *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) and *Matter of Ho*, 22 I&N Dec. 206, 211 (Comm. 1998).

As the record remains absent documentation of the petitioner's membership in any associations, we concur with the director that the petitioner does not meet this criterion.

*Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations*

Letters from clients and people interested in his work is not the type of formal recognition for significant contributions contemplated by this regulation. The petitioner's references express satisfaction with his work, interest in feng shui and some predict that his research proposals will produce important data. As will be discussed in more detail below, the references do not explain how the petitioner has already contributed to the practice of feng shui. While the petitioner has garnered some media attention, this criterion does not include recognition from the media. The record lacks any formal recognition from peer-reviewed medical journals or governmental health agencies.

As the petitioner has not demonstrated that he is an alien of exceptional ability, the issue of whether waiving the job offer requirement is in the national interest is moot. Nevertheless, we will address this issue as it was one basis of the director's denial.

Neither the statute nor 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 the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service 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 Dep't. of Transp.*, 22 I&N Dec. 215 (Comm. 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.

The director did not expressly conclude whether the petitioner works in an area of intrinsic merit, although she did note the lack of evidence that feng shui has the health benefits claimed by the petitioner. The petitioner has provided evidence of healthcare facilities that have adopted the petitioner's feng shui inspired designs and letters from members of the health care industry discussing the potential of the petitioner's proposals. The petitioner has not provided articles in peer-reviewed medical journals documenting positive health effects from feng shui designs. While feng shui may have *artistic* intrinsic merit as a form of interior decorating, the claim that it has *medical* intrinsic merit is less persuasive.

The *proposed* benefits of the petitioner's work are improving healthcare and the environment. Local contributions to the national interest, such as those made by teachers and pro bono attorneys, do not have a sufficiently national impact to warrant a waiver of the labor certification process. *Id.* at 217, n. 3. Consulting on the design of local healthcare facilities appears to have a similarly local impact. The petitioner, however, also proposes two studies on the benefits of feng shui use in healthcare facilities. The likelihood that the petitioner can obtain funding and achieve the beneficial results proposed is not an issue in determining whether such benefits would be national in scope. Obviously, any research on improving healthcare could conceivably have a national impact. Thus, while tenuous, we find that the *proposed* benefits of the petitioner's research would be national in scope.

It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

As stated above, merely consulting on the design of local healthcare facilities will not produce benefits that are national in scope. Thus, we will focus on the petitioner's research proposals. While one of his proposals is lengthy, it provides minimal detail regarding how the study will run and how the results will be quantified and

interpreted. Specifically, the petitioner proposes to develop healthcare environments able to stimulate the natural healing mechanisms or to support medical treatment in the battle against the aging process through the manipulation of light, color, sound, smells, textures, materials, spatial perception, cardinal orientation and the presence of plants and animals. The petitioner further proposes to “show how the misinterpretation of factors such as Ergonomics, Mechanical ventilation, Neon lighting, Electromagnetic fields, Earth energy flows (such as the Hartman net) and many others commonly present in hospitals, may actually be inhibiting the healing process.” The title of the project suggests that the results of the project will relate specifically to both geriatric patients in general and Alzheimer patients in particular.

The petitioner claims that he will use random controlled trials and observational studies with paired data. The actual research plan is stated as follows:

**The first phase.** A maximum control phase. This will be developed in a quiet sub-urban building, (an assisted living facility) where two groups of geriatric patients, the Variable group and the Control group, with similar personal profiles and health conditions will be housed for medium-term periods of time. The Study group will occupy the previously prepared environment. The first hypothesis for the settings of environmental variables will be those recommended by the Advisors, according to the experiences they have had so far. The comparison group will be housed in a standard health-care environment. For both groups the activities plan will include weekly and bi-weekly programs with specific goals; the daily activities plan will lead geriatric patients to stimulate their emotional activity and their maximum involvement, physically and mentally, in everyday activities. This phase will have an Identification (Detection) period, a Verification period and Ratification period of the cause-effect relationship between each of the environmental variables and the individual’s health outcome. The Consultants team will evaluate the results independently. Upon the results confirmed by the Consultants, the whole team will later deliberate to establish a first hypothesis of Ideal Environmental Profile (I.E.P.) for the treatment of Geriatric Patients.

The proposal projects that the above phase will last 12 months and would be repeated at an urban hospital. The plan does not identify the “independent” and “multi-disciplinary” consultants and advisors proposed to evaluate the results, although a staff psychiatrist at CCM in New York and Dr. [REDACTED], an endocrinologist, assert that they are part of the petitioner’s consulting team. Grant proposals typically include the names of the researchers and list their past research work as evidenced through peer-reviewed publications.

The plan also does not identify the assisted living center(s) to be used. The record reflects that the Oaks and the Munne Center in Florida have both implemented the petitioner’s design recommendations, but does not reflect that either has agreed to participate in a 12-month study. Any peer-reviewer with scientific credentials evaluating this proposal would want to also know where the control patients will be housed, as non-feng shui variables (diet, patient/caregiver ratio, average length of stay, age of facility and average room size for example) between the facilities would need to be minimized or eliminated if any useful data is to be obtained. The petitioner also does not indicate how many patients would be in each group, a significant detail as the size of the group is an important factor in the ultimate usefulness of the data. The record does not establish that research on an undetermined number of patients at one assisted living facility for 12 months would provide statistically significant results, even if repeated at a larger hospital. A separate proposal provides even less detail regarding how the petitioner plans to research the impact of similar factors on cancer patients. Moreover, it is not clear

how results obtained from assisted living facilities would relate to Alzheimer patients, the goal of the petitioner's research.

The above analysis is not intended as an analysis of the scientific merit of the petitioner's hypothesis, but the completeness of his proposal and the likelihood that it will result in funded research that produces useful results. Such analysis is akin to the review Citizenship and Immigration Services (CIS) does of business plans submitted in support of alien entrepreneur petitions pursuant to section 203(b)(5) of the Act. *See generally Matter of Ho*, 22 I&N Dec. 206, 213 (Comm. 1998). As discussed below, the petitioner submitted his proposal as evidence of his eligibility with no evidence of funding and no evidence of his prior successes in research. As such, it is the only evidence available for us to evaluate. While we do not purport to be experts in medical research capable of evaluating the scientific merits of a complete research proposal, the record lacks testimony from experienced grant reviewers at the National Institutes of Health or similar agency or distinguished science foundation positively evaluating the research methods set forth in the petitioner's proposal.

Even if the above analysis of the petitioner's proposal is inappropriate based on our lack of scientific expertise, we emphasize that our analysis of the proposal is *not* the sole basis of our final determination on the national interest waiver issue. In addition, the petitioner has provided no evidence that his proposal has or will receive the necessary funding. The Florida Department of Elder Affairs responded to an inquiry from the petitioner that it does not fund "research projects like yours," and encouraged the petitioner to seek funding from universities and hospitals. While [REDACTED] who has authored work on the importance of light to human health, opines that that petitioner's ideas "merit further investigation," he does not indicate that he would fund such work. [REDACTED] of *The Mozart Effect* recommends to the petitioner several associations that fund "this type of integrated and holistic research." The record is absent, however, any evidence that any of these associations have agreed to fund the petitioner's proposed research. While the petitioner spoke at a "wellness conference" at Florida International University and gave a feng shui presentation at Miami-Dade Community College, the record contains no evidence that these institutions have expressed any interest in funding his proposed research.

*Most significantly*, the record contains no evidence that the petitioner has ever previously conducted medical research or that such research has been successful. While the petitioner has led feng shui workshops and given a feng shui presentation at a "wellness conference," he has not authored medical research articles published in peer-reviewed medical journals. In fact, the petitioner has no medical or research background at all that we could evaluate for a track record of success. As stated above, it must be established that the petitioner's past record justifies projections of future benefit to the national interest. In this matter, the petitioner's assertion that his research will provide useful results is entirely speculative.

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.