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[REDACTED]

FILE: SRC 05 129 50766 Office: TEXAS SERVICE CENTER Date: NOV 01 2006

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*

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) remanded the matter to the director on technical grounds. The director again denied the petition. The matter is now before the AAO on certification, pursuant to instructions in the AAO's remand order. The AAO will affirm the director's decision to deny the petition.

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 arts. The petitioner seeks employment as a show dog handler. 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 has not shown that she qualifies for classification as an alien of exceptional ability in the arts, or 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 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 first issue in this proceeding concerns the immigrant classification that the petitioner seeks. Citizenship and Immigration Services (CIS) regulations at 8 C.F.R. § 204.5(k)(2) offer the following definitions:

*Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

*Exceptional ability in the sciences, arts, or business* means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

*Profession* means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.

The petitioner does not claim to hold any degree, advanced or otherwise, and the petitioner has not shown that dog show handling qualifies as a profession under the regulatory definition. Therefore, the petitioner must demonstrate exceptional ability in order to qualify for the classification sought. 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 were listed in the instructions to the Form I-140 petition. In keeping with the above regulatory definition of "exceptional ability," 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 all or most workers in a given field cannot demonstrate "a degree of expertise significantly above that ordinarily encountered." For example, every qualified physician has a college degree and a license or certification, but it defies logic to claim that every physician therefore shows "exceptional" traits.

*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 noted above, the petitioner claims no higher education. Asked to list her degrees on Form ETA-750B, Statement of Qualifications, the petitioner has written "N/A," meaning "not applicable."

*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 beneficiary of an immigrant visa petition must be eligible at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Therefore, the petitioner must be able to show at least ten years of full-time experience as of the petition's filing date, which is April 5, 2005.

Counsel states that the petitioner "has 25 years combined experience and approximately 10 as an expert in this industry." The petitioner was 37 years old at the time of filing, and therefore her "25 years combined experience" would have begun when she was roughly 12 years old. Counsel therefore appears to derive this figure from the beginning of the petitioner's interest in show dogs, rather than the beginning of any sort of career. The petitioner has submitted letters from several show dog owners, attesting to the petitioner's work with their dogs. Many of these letters offer no specific dates, but they refer to the petitioner's work in the United States, where the petitioner did not reside before 2000. Those letters that do list dates show no dates before 1998.

In personal statements and on various government forms, the petitioner herself repeatedly and consistently states that she has been a “Professional<sup>1</sup> Show Dog Handler” since “December 1996,” less than eight and a half years before the petition’s filing date. The petitioner does not claim any earlier employment. Therefore, the petitioner has not submitted evidence of at least ten years of full-time experience in her occupation. (Vague references to prior amateur work are unsupported, and the petitioner has not shown that amateur activity of this kind amounts to full-time experience in an occupation.)

Furthermore, the record suggests that the petitioner’s work since December 1996 has not always been full-time. The petitioner entered the United States in 2000 as an L-2 nonimmigrant, a classification that did not permit employment prior to January 16, 2002. For approximately two years, the petitioner states, she showed dogs “for only a few people in order to keep my skills sharp,” accepting reimbursement for travel and expenses but no additional compensation. While there is no solid evidence that the petitioner’s work has ever been full-time, the petitioner’s own description of her career indicates a reduction in her activity in the years immediately following her 2000 entry into the United States.

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

The petitioner stipulates that there is no licensure or certification in her occupation.

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

Counsel states that the beneficiary’s “individual income was \$54,000 last year [2004] [and] is expected to exceed \$60,000 this year.” The petitioner corroborates these sums with tax documents, but there is no evidence to allow a comparison between the petitioner’s remuneration and that ordinarily encountered in the field.

*Evidence of membership in professional associations.*

Counsel states that the petitioner “is a member of The American Kennel Club, The Canadian Kennel Club and their Bahamian and Australian counterparts.” The petitioner submits no evidence to establish that these memberships amount to prestigious credentials as opposed to basic requirements necessary for participation in dog shows sponsored by those clubs.

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

The petitioner submits information regarding several of the dogs she has handled at prestigious dog shows. These events, however, by their nature involve judging the dogs themselves rather than their handlers as such. The documents regarding these champion dogs identify not only the handler, but also the owner(s) and breeder(s) of

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<sup>1</sup> The word “professional” appears, here, in the colloquial sense, as in “professional athlete,” rather than in the stricter sense defined by the statute and regulations.

each such dog.

The petitioner submits evidence showing that the American Kennel Club Eukanuba National Championship invites “the top 25 of [each] breed” to participate, and a total of “2,581 dogs were entered” in the 2005 Westminster Kennel Club Dog Show, described as “the largest all-breed dog show in the world.” The information regarding the Westminster show is from a printout from <http://www.wikipedia.com>, a user-edited encyclopedia that “may not have been reviewed by professional editors.” The Wikipedia entry states: “Although not required, most dogs are handled at Westminster by professional dog handlers who earn good fees for being able to bring out a dogs’ strengths in the show ring.” The director noted the large numbers of dogs exhibited at these shows, and found that the petitioner had not submitted objective, documentary evidence that would distinguish her from other handlers at these and similar events.

The director found that the petitioner had not submitted sufficient evidence to establish exceptional ability. The director, in certifying the decision to the AAO, informed the petitioner of her right to supplement the record within 30 days of the decision. The record contains no indication that the petitioner supplemented the record during the time allotted.

The petitioner has shown that she has exhibited show dogs at the highest levels of competition, but this, by itself, is not sufficient to meet the regulatory requirements for a finding of exceptional ability. The petitioner has not shown by preponderance of evidence that she meets any of the six regulatory criteria. Therefore, we cannot conclude that the petitioner has established that she qualifies for classification as an alien of exceptional ability as a show dog handler.

The remaining issue concerns whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest. Because the director has found that the petitioner has not established eligibility for the underlying immigrant classification, the waiver issue is arguably moot; she cannot receive a national interest waiver unless she qualifies for the underlying classification. Nevertheless, the director addressed this issue in detail and we shall examine that analysis here.

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 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 (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.

In a statement accompanying the petitioner's initial submission, counsel states:

Vast arrays of businesses flourish under the mantle of "Dog Shows." These businesses include products and services for every imaginable K9 product from food to grooming tools to dog toys, crates and dog art for every taste. Other ancillary retail and wholesale businesses that are directly impacted are local gasoline sales, variety retail stores, grocery markets, local restaurants, hotels, entertainment, recreational vehicle parks and dealers (RV), local animal hospitals and many more. American Kennel Club studies have shown that the impact on the local economy during a major dog show even can vary from \$100,000 to \$1.9 million in economic impact. These events are held year round and in virtually every state in the United States as well as in other countries. In the United States alone the benefit to American communities is estimated to be nearly a half of a billion dollars annually. At the heart of this industry are the professional handlers such as [the petitioner].

The only evidence offered to support these claims is a letter on the letterhead of the American Kennel Club, addressed to [redacted] / Local Business Reporter / Daily Herald / [redacted] Big Town, USA" and attributed to [redacted] President, Canine Kennel Club." The letter appears to be a generalized template, akin in some ways to a press release, intended to be customized for submission to local newspapers.

More significantly, the above statistics concern the overall impact of the dog show industry in the United States. By no means does it follow that any individual show dog handler makes a proportional economical contribution.

The petitioner cites her success exhibiting a number of prizewinning dogs. The petitioner's skill in her chosen field is not presumptive evidence in favor of granting the national interest waiver. As the director has observed, the prizes are awarded based on the characteristics of the dogs, which rely on breeding, grooming and training in addition to the handling that occurs during the dog shows themselves. Also, even if the petitioner had shown that

her involvement significantly affected the outcome of the dog shows in which she participated, she would still need to demonstrate why this influence on the outcome is in the national interest. That is, the petitioner has not shown that it is in the national interest for her clients' dogs to win these dog shows instead of other dogs with other handlers. The petitioner has not even established the basic principle that the specific outcome of a dog show has any appreciable effect on the national interest. Whatever economic impact the dog show industry may have at a national level, this impact does not rely on the work of the petitioner or any other single handler.

The petitioner also has not shown that her work as a dog show handler has been especially innovative or influential among other handlers. Therefore, the petitioner has not shown that her work has changed or advanced the field of show dog handling. She has shown only that she has successfully made a living exhibiting purebred dogs at dog shows. The petitioner has submitted nothing to show that she stands out, in any objectively verifiable or significant way, from other successful show dog handlers. Therefore, the petitioner has not established eligibility for the special benefit of a waiver of the job offer/labor certification requirement that, by law, normally applies to aliens in the classification that the petitioner has chosen to seek.

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 petition will be denied 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. Accordingly, the AAO affirms the director's denial of the petition.

**ORDER:** The director's decision of September 6, 2006 is affirmed. The petition is denied.