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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: SEP 17 2008

SRC 05 142 50974

IN RE: Petitioner: [redacted]
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, Texas Service Center, denied the employment-based immigrant visa petition. The petitioner appealed the denial to the Administrative Appeals Office (AAO), which remanded the petition for further action and consideration. The director subsequently denied the petition a second time and certified the decision to the AAO for review. 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 a member of the professions holding an advanced degree. The petitioner states that she intends to work as a "public accountant and master in taxes." 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 a member of the professions holding an advanced degree. The director did not address the request for an exemption from the requirement of a job offer, stating that the request is moot because the petitioner does not qualify for the underlying immigrant classification.

On June 24, 2008, the AAO advised the petitioner that she had 30 days to submit a response to the certified denial, pursuant to Citizenship and Immigration Services (CIS) regulations at 8 C.F.R. § 103.4(a)(2), with an additional three days for mailing as allowed by 8 C.F.R. § 103.5a(b). To date, two months after issuing that notice, the AAO has received no further correspondence from the petitioner. The AAO therefore considers the record as it now stands to be complete, and will adjudicate the petition based on that record.

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 petitioner has not disputed the director's 2005 finding that the petitioner does not qualify for classification as an alien of exceptional ability. In order to qualify for the classification sought, the petitioner must establish that she qualifies as a member of the professions holding an advanced degree.

8 C.F.R. § 204.5(k)(3)(i) states that, to show that the alien is a professional holding an advanced degree, the petition must be accompanied by:

(A) An official academic record showing that the alien has an United States advanced degree or a foreign equivalent degree; or

(B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

The petitioner must also establish that her occupation falls under the regulatory definition of a profession at 8 C.F.R. § 204.5(k)(2): *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 has not claimed to hold an advanced degree. Instead, she has claimed progressive post-baccalaureate experience equivalent to a master's degree. The petitioner originally cited three pieces of evidence in support of this claim:

- A translated copy of her diploma from Universidad Iberoamericana, which indicated that the beneficiary has earned "the Grade of Licentiate in Public Accounting" by completing "the subjects according to the current plans and programs" and by passing "the professional test that was taken on 14th of June of 1999."

- A copy of a credential evaluation from the International Educational Research Foundation, which listed the courses that the beneficiary took at Universidad Iberoamericana. The evaluator concluded that the petitioner's "studies are considered equivalent in level and purpose to the Bachelor of Science in Accounting, awarded by regionally accredited colleges and universities in the United States."

- A letter from [redacted], manager of human resources at Servicios Empresariales [redacted], Mexico. The translation of the letter was not certified pursuant to 8 C.F.R. § 103.2(b)(3). Mr. [redacted] stated that the petitioner worked for that company continuously from January 30, 1999, to the date of the letter (January 7, 2005), documenting nearly six years of employment. Mr. [redacted] stated that, during this time, the petitioner "has developed satisfactorily the position of Public Accountant," but he did not specify how long the petitioner held that title. If the company hired the petitioner as a public accountant in January 1999, more than four months before the beneficiary became a "Licenciate [*sic*] in Public Accounting," then clearly the company cannot properly have hired her into a position that required the "licentiate" degree.

Documents reproduced in the record also show that the Universidad Autónoma de Coahuila awarded the petitioner the title "*Maestria en Impuestos*," or "Master in Taxes," on September 27, 2003. The petitioner stated that she studied for this degree for three years (September 2000 to September 2003), but she did not expressly claim that this title amounts to a master's degree, and the record includes no evaluation to that effect. The aforementioned evaluation from the International Educational Research Foundation does not

mention the beneficiary's 2000-2003 studies. Instead, the petitioner has argued that she "could be properly classified as an alien who possesses the equivalent of a master degree" because "she has at least performed the position of public accountant in the last five years."

In the first denial notice, issued August 30, 2005, the director did not address the petitioner's claim to possess post-baccalaureate experience equivalent to a master's degree. The director did find that the petitioner had failed to show that her "Master in Taxes" certificate is equivalent to a U.S. master's degree. On appeal from that decision, the petitioner noted that she had never claimed that the "Master in Taxes" certificate is equivalent to a master's degree.

The AAO remanded the petition on August 8, 2006, stating:

> The director must give more thorough consideration to the petitioner's claim that her experience from 1999 to 2005 qualifies as the equivalent of a master's degree. In this regard, the petitioner may need to submit more specific information from her employer in order to establish more clearly that she worked at least five years as an accountant between the time she received her licentiate degree and the date she filed the petition. The petitioner should also establish that the employment during these five years was progressive in nature and that her accounting work required at least a bachelor's degree at the entry level. Any evidence and correspondence in this regard should account for the fact that the beneficiary's employment began before she held any degree (which, on its face, indicates that the petitioner was hired into a position that does not require such a degree at the entry level). If the petitioner was hired in some capacity other than that of an accountant, and was subsequently promoted, this would leave open the possibility that her work as an accountant meets the definition of a profession, but the petitioner would still need to demonstrate when this promotion took place.

On August 23, 2006, the director instructed the petitioner to "submit evidence that the petitioner has five years of *progressively* responsible experience which was gained after June 1999," and to provide detailed information regarding her post-baccalaureate employment.

In response, the petitioner submitted a one-page letter, in Spanish, from [redacted] Chief of Human Resources for the TYLSA Group, accompanied by an uncertified translation indicating that the petitioner began "performing provisionally the position of Public Accountant" "on January 30, 1999." The letter goes on to state that, after the beneficiary "submitted her Diploma," the petitioner "was appointed to take formally the position of Public Accountant," "beginning on 01 September 1999." The translation also contained the phrase "[b]y the time she has performed the position of General Accountant." The petitioner submitted no first-hand, contemporaneous documentation to support the letter (which was written several years after the events described).

The director again denied the petition on November 15, 2006, stating: "It is unclear if the positions of Public Accountant and General Accountant are different positions. If they are different positions, the duties of Public Accountant are not provided and the date she was promoted to General Accountant is not provided."

The director concluded: "The petitioner has not clearly established that the beneficiary has five years of progressively responsible post baccalaureate experience."

The petitioner has not responded to the director's latest decision. The AAO hereby affirms that decision.

In the interest of thoroughness, the AAO shall consider here an issue not previously discussed. That issue, specifically, is 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 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.

In a letter accompanying her initial submission, the petitioner stated:

> Her presence in the U.S. is CRITICAL regarding the area of the social security. . . .
>
> [T]he applicant will develop an activity closely related to the preserving and improvement of the Program of Social Security in the United States of America. . . .

After discussing, at length, details of the Social Security system and its projected financial shortfalls, the petitioner stated:

> In our hands is the power of contributing to improve such uncertain future by allowing the [petitioner] to develop and practice her profession in the fields of social security, taxes and accounting. A National Interest Waiver must be conferred to her so she could start to lead into the solutions of this matters. By this way she could apply her knowledge and experience for improving and helping to prevail the program of social security and the welfare of millions of American citizens.

(*Sic.*) The petitioner did not explain how she intends to improve and preserve Social Security; she only stated that, with her expertise, she will somehow be able to do so. The petitioner submitted letters from close associates, including former college professors, but no evidence to show that the petitioner has successfully reformed national government programs comparable to Social Security, or that that her ideas have attracted any attention in the United States.

The petitioner has not satisfactorily established that she qualifies for classification as a member of the professions holding an advanced degree or its specified equivalent. Furthermore, 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 AAO will affirm the denial of the petition 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 director's decision of November 15, 2006 is affirmed. The petition remains denied.