

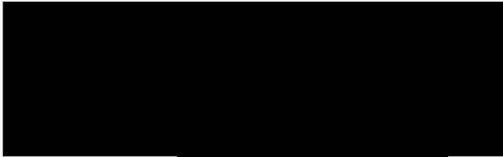
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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
SRC 06 183 53795

Office: TEXAS SERVICE CENTER Date: JAN 08 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:

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.

A handwritten signature in black ink, appearing to read "Navi Plensa".

3 Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter 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 a member of the professions holding an advanced degree. The petitioner seeks employment as a senior web design specialist at the Florida Department of Elder Affairs (FDOEA). 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 a statement accompanying the initial filing, the petitioner described her work:

**I have independently designed and developed as well as providing maintenance and support several complicated web-based computer systems: Information and Retrieval System (I & R), the Department Document Tracking System (FLELDER), Outreach Resource Center Online Library and Tracking System** for the Florida Department of Elder Affairs (DOEA) to collect, analyze, and provide data and other information to elders in Florida and nation-wide, their care-givers, service providers, Federal Agency on Aging (AOA), volunteers, DOEA contact managers and related staff. I have also designed/developed and maintained DOEA internet and intranet website, the SHINE (Serving Health Insurance Needs of Elders) website, the Community for a Life-Time (CFAL) website, the Long-Term Care Ombudsman (LTCOP) website, the Consumer-Directed Care website (CDC), and the Florida Affordable Assisted Living website (FAAL). . . .

In addition to the system development and web development, I have been providing guidelines, technical assistance and training to the department staff, creating analysis, establishing databases, providing management with translations when needed. I have also participated in making the fraud fighting videos, brochures, newsletters by writing the scripts, organizing volunteers, translating, and narrating in the video program. My extensive work plays a key role in the nationally crucial field of health and housing, specifically concerning elder health, wellness, and housing.

The intrinsic merit of computer systems to assist in elder care is not in dispute. Because the petitioner works on information systems for a state government program, it is not clear what scope her work has beyond the state of Florida.

To support her assertion that “no labor certification could take into account [her] impressive record of success,” the petitioner submitted six witness letters from current and former FDOEA officials. We shall discuss examples of those letters here. Tom Reimers, Director of the FDOEA Division of Volunteer & Community Services, described the petitioner’s past work for the department:

[The petitioner’s] first position with the department was as an Information Specialist for a grant from the federal Administration on Aging entitled, “Outreach Resource Center for Culturally Diverse Elders.” In this capacity, she helped grantees (aging network staff from across the country) learn ways to perform more effective outreach to people with lingual and/or cultural barriers. [The petitioner] created and maintained the grant databases and web site, she delivered training on cultural outreach to numerous organizations, and she prepared grant materials and reports. . . . [The petitioner] produced work that was far superior to her predecessor, and she was largely responsible for the successful completion of this grant.

After the grant period ended, [the petitioner] was assigned to a critical position in the department’s Information and Referral unit. She was given responsibility for developing the first-ever statewide elder resource database for aging network professionals and the public.

Due to her exemplary performance in the Information Specialist position, staff in the department’s Division of Management Information Systems took notice of [the petitioner] and offered her a promotion to her current position, Senior Web Design Specialist. [The petitioner] is now responsible for maintaining and updating the department’s internet and intranet web sites, and for creating new pages and sites to highlight the department’s many programs and services. Quite simply, [the petitioner] has performed better than anyone else who has held this position in the 14-year history of the department. . . .

[The petitioner] would be impossible to replace, and it would create a severe hardship for the department and the elders we serve if she were to be denied permanent resident status.

[REDACTED], Enterprise & Website Manager, Management Information Systems at the FDOEA, stated:

The web sites [the petitioner] designed/developed/re-established and maintained play a critical role in providing accurate and timely information to [Florida's] elders and their caregivers. . . .

[The petitioner] created the SHINE . . . web site, which is an important tool in training its 450+ volunteers throughout the state, who have so far served more than 400,000 elders. . . .

[The petitioner] has also participated in developing and maintains the Florida Affordable Assisted Living online system for the Coming Home program, which enables computer communication and information dissemination. In addition, she created a web-based Interactive document tracking system that allows the department to track its correspondence accurately and efficiently.

stated that the petitioner applied for the waiver because a petition for the lesser classification of skilled workers, professionals and other workers (established by section 203(b)(3) of the Act) "takes too long." Nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process. *Matter of New York State Dept. of Transportation* at 223.

[redacted], former Program Manager at the FDOEA's Outreach Resource Center for Culturally Diverse Elders, stated:

Possibly one of [the petitioner's] most important contributions, that is having a lasting impact today and will for years to come, is the 15 minute Medicare fraud prevention video she narrated and participated in writing. Senior Medicare Patrol Projects throughout the country are utilizing the video to teach elders how to identify fraud and prevent it. The Administration on Aging has had to duplicate copies of the video numerous times, because fraud prevention projects continue to request additional copies.

The record contains no documentation to establish the distribution or impact of the fraud prevention video, and there is no indication that the petitioner's current job description involves the production of further materials of that type.

On September 11, 2006, the director issued a request for evidence, instructing the petitioner to demonstrate the national scope of the petitioner's work and to show that the "petitioner's accomplishments are substantially greater than others working in . . . her field of expertise" to an extent that serves the national interest (as opposed to any employer's interest in hiring the best available workers). The director requested "letters from independent evaluators assessing the beneficiary's expertise as compared to others in her field."

In response, the petitioner asserted that her government position "makes it improper to ask [for] a reference letter from an independent evaluator." The petitioner submitted a letter from [redacted], Secretary of the FDOEA and, thus, head of the state agency seeking to employ the petitioner. Secretary Green described

various projects in which the petitioner was involved. For instance, she stated that the petitioner “played a key role in developing and/or managing Web sites and online systems for the *Communities for a Lifetime* (CFAL) initiative. . . . The CFAL initiative is now a national model that has been presented to health care experts from 15 countries as an example of one of the United States’ best practices in planning for a growing aging population.” The record contains no documentary evidence to show the extent to which CFAL has served as “a national model,” or to show that CFAL’s status as “a national model” is largely due to the petitioner’s work on the initiative’s web site and databases. The record is silent regarding the extent, if any, to which other states or countries have adopted the petitioner’s web designs.

The director denied the petition on December 11, 2006, stating that the petitioner’s status as “a competent web designer whose skills and abilities are of value to [her] current employer” does not entitle the petitioner to a national interest waiver. On appeal, the petitioner asserts that her work is national in scope because she created computer systems that “are not only used by the state of Florida, but also by other states on their elder services. The visitors of our Web sites are from all over the nation.” The petitioner submits no evidence to support these claims. 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 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)). Furthermore, even if the petitioner had shown that a particular state program was an influential model, it would be far from obvious that this influence was due not to the organization of the program or the services provided, but rather the design or administration of the program’s web site.

The petitioner argues that she is not merely an average web designer, and that progress on FDOEA projects would experience costly delays if she had to be replaced. We note that another immigrant petition, receipt number SRC 07 135 52134, was filed (with an approved labor certification) on March 28, 2007 and approved on June 22, 2007. On July 3, 2007, the petitioner filed a Form I-485 adjustment application, receipt number SRC 07 264 50118. That application is currently pending. Clearly, therefore, the labor certification process has not resulted in the replacement of the petitioner or prevented her from applying for adjustment of status. We note that the national interest waiver affects only the petition stage; receiving a waiver does not expedite the processing of an adjustment application, improve the chances of approval of the adjustment application, or exempt the alien from the cut-off dates for oversubscribed visa categories.

The petitioner has established that she is a valued employee of the FDOEA, but she has not made a persuasive case that her work merits the special benefit of a national interest waiver. The record contains no objective evidence of the national scope of her work, and there is no evidence that the beneficiary’s efforts have had a measurable effect on care or services provided to Florida’s elderly population. The subsequent approvals of a labor certification and petition on the alien’s behalf effectively neutralize any argument that the labor certification process is inappropriate or inapplicable to the circumstances of the alien’s employment.

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 any proceedings arising from the petition, with approved labor certification, filed on behalf of the alien in this matter and subsequently approved.

**ORDER:** The appeal is dismissed.