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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: JUN 05 2014

OFFICE: NEBRASKA SERVICE CENTER

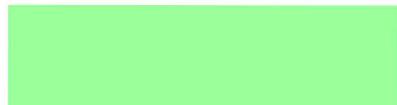
FILE:



IN RE:

Petitioner:

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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before us on appeal. We will dismiss the appeal.

The petitioner seeks classification under 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 computer network professor. Since 2005, the petitioner had been an assistant professor at [REDACTED] in Madison, Wisconsin; the university promoted him to associate professor after he filed the petition. 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 brief, witness letters, and information about his duties.

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, Pub. L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states:

The Service [now U.S. Citizenship and Immigration Services (USCIS)] 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.

In re New York State Dep’t of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm’r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* 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. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien’s past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner’s assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term “prospective” is included 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. *Id.*

The USCIS 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 petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on June 17, 2013. On Part 6, line 3 of the petition form, the petitioner stated that he intends to “[t]each undergraduate students in the field of computer networks & security technologies. Design and implement curriculum for a university in the US.”

The petitioner documented his own prior education up to the master’s degree level, and professional certifications from computer-related companies such as [REDACTED] These documents, by

themselves, demonstrate the petitioner's professional competence, but do not distinguish him from other professionals in his field.

To provide additional perspective on his qualifications, the petitioner submitted several witness letters. Many of these letters provide general praise for the petitioner's skills and abilities, without identifying any specific contributions through which the petitioner has influenced his field. For example, [REDACTED] associate dean (emeritus) at the [REDACTED] who has "known [the petitioner] for over twenty years," stated that the petitioner's "performance as a teacher has been outstanding. . . . He always sets a high standard for himself and performs at that level." The remaining witnesses are all instructors or the petitioner's former students at [REDACTED] such as [REDACTED] associate professor at [REDACTED] who stated that the petitioner's "commitment is obvious when he develops his classes, implements his labs, and instructs his students. He is admired by his students for both his technical ability and fun-loving nature that he utilizes to teach them."

The most specific praise for the petitioner comes from another associate professor at [REDACTED] who stated that the petitioner "has served as the main resource for open source Linux administration in [REDACTED]. . . [The petitioner] is one of those go-to guys not only to the students but also his coworkers whenever they have a tough Linux or Virtualization related problem." The witnesses praised the petitioner's personal character and indicated that the students and administration of [REDACTED] depend on his expertise, but they did not claim or establish that the petitioner's work has influenced his field as a whole.

The director issued a request for evidence on August 29, 2013, instructing the petitioner to establish that the benefit from his proposed employment would be national in scope, and that he has had a degree of influence on his field that would justify the waiver. In response, the petitioner stated:

My continued research and testing make me stand out amongst my peers in the area of computer security, Linux administration, and Virtualization. . . .

My dedication and passion for education have led me to develop tools, processes, and outlines for efficient delivery of Computer and Information Technology courses with no loss of real world experience for students. . . . My in-depth knowledge in security provides a foundation for me to innovatively come up with real world case projects worthy of studying and implementation. For example, I revamped a course to be a culmination and final test of all skills learned in the pursuit [of] Computer and Information Technology degrees in the area of networking and security. I have been very instrumental for [REDACTED] to be known as a place to go for recruiting students with knowledge in Unix or Linux systems due to my passionate mix of both Windows and Open Source worlds in building student skill levels. [REDACTED] in Dubuque, Iowa actively recruits graduates from [REDACTED] for their operations due to the approach I introduced.

In the letter excerpted above, the petitioner described his work at [REDACTED] but did not show that he stands out from others in his occupation to an extent that would justify a waiver of the job offer requirement that, by statute, normally applies to the classification he seeks.

In 2007, [REDACTED] (before becoming [REDACTED]) awarded the petitioner the "President's Award" for "Instructor of the Year," as well as "1st Runner-Up" for "Teacher of the Year." Under the USCIS regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F), recognition of this type can provide partial support for a claim of exceptional ability, but, as explained previously, exceptional ability (a degree of expertise significantly above that normally encountered) is not grounds for waiving the job offer requirement, and recognition from one's own employer does not demonstrate impact or influence beyond that employer. The petitioner asserted that [REDACTED]'s graduates disperse throughout the United States, but this does not demonstrate that the petitioner's own work produces benefits that are national in scope.

"[REDACTED] an article in the March 2006 issue of [REDACTED] includes quotations from the petitioner. The name of the magazine and advertisements for local businesses indicate that [REDACTED] is a local or regional publication. The article does not indicate that the petitioner has had any particular impact on computer network education.

The petitioner submitted three further letters, all from witnesses at [REDACTED] campus. Like the earlier letters, these letters contain general praise for the petitioner's work at the university, along with additional details about his specific responsibilities, but no indication that the petitioner's contributions go beyond being a dedicated and competent teacher. Section 101(a)(32) of the Act indicates that college instructors are members of the professions, and section 203(b)(2)(A) of the Act holds professionals to the job offer requirement. Therefore, the petitioner's status as a qualified instructor at a postsecondary institution does not establish or imply eligibility for a waiver of that requirement.

The director denied the petition on December 10, 2013, stating that, although "the alien petitioner is a well-educated individual of high character" whose "services have been of substantial use to his current employer," the petitioner has not established the national scope or influence on the field required by the *NYS DOT* guidelines.

On appeal, the petitioner asserts that his contributions have received "national coverage," because [REDACTED] is a nationwide university" and the petitioner "has taught or developed courses across various campuses." New witness letters and statements, all from [REDACTED] faculty and students, praise the petitioner's skills and achievements as an instructor. The petitioner's direct impact, however, remains confined to the [REDACTED] system. The record does not show that the petitioner has shaped the way computer science courses are taught outside of that university, or identify any influential, original contributions the petitioner has made to his field.

One witness, [REDACTED] chair of the Computer Science and Information Technology Department at [REDACTED] campus in Atlanta, Georgia, states that a looming shortage of computer

security professionals “has been recognized by well-known computer organizations . . . [and] governments . . . as a national interest to consider,” but the record does not show that the petitioner’s actions have lessened or averted this potential shortage. The assertion that the United States needs to train more computer security professionals is a general claim about the importance of the petitioner’s occupation; it does not explain why the petitioner should be singled out for special benefits such as an exemption from the statutory job offer requirement.

The petitioner has established that he is a well-regarded instructor at [REDACTED] but university-level instructors are not, as a class, collectively exempt from the job offer requirement. Therefore, the petitioner must establish why he, individually, should receive a waiver of a statutory requirement that applies to others in his occupation. The petitioner provides additional details about his work at [REDACTED] but the petitioner does not establish eligibility by describing his work. The petitioner acknowledges that he “has not published a paper in the Information Technology field,” but asserts that he helped to coordinate a professional conference and has “[l]ed and guided students and companies across various industries.” The petitioner asserts that he “has served and will serve the national interest to a substantially greater degree than several U.S. workers having the same minimum qualifications,” but he submits no objective evidence to support this claim. 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 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

The petitioner has not established a past record of achievement at a level that would justify a waiver of the job offer requirement. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that his influence be national in scope. *NYS DOT*, 22 I&N Dec. 217, n.3. More specifically, the petitioner “must clearly present a significant benefit to the field of endeavor.” *Id.* at 218. *See also id.* at 219, n.6 (the alien must have “a past history of demonstrable achievement with some degree of influence on the field as a whole.”).

As is clear from 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.

We will dismiss the appeal for the above stated reasons. In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.