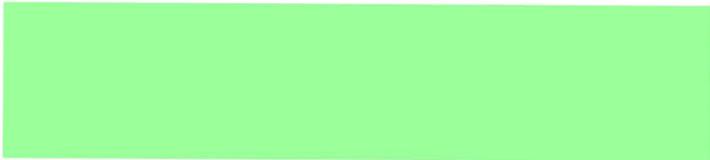


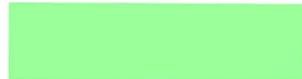


U.S. Citizenship
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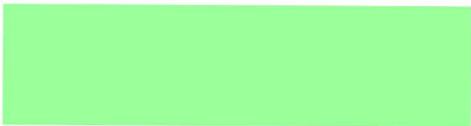
(b)(6)



DATE: **MAR 25 2014** OFFICE: NEBRASKA SERVICE CENTER



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 the AAO on appeal. The AAO 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 an alien of exceptional ability in the sciences and as a member of the professions holding an advanced degree. The petitioner is an electrical/electronics engineer who seeks employment as director of hardware design at [REDACTED]. 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 statement and supporting evidence.

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 cited only one ground for denial, stating that the petitioner has not 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, P.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 February 25, 2013. In an accompanying statement, the petitioner stated:

I have broad experience and knowledge in the renewable and sustainable energy sector. Particularly, I have over ten years of experience in power electronics design, energy conversion and solar power technology. To this regard I hold a number of patents in my name dating back to 2003. . . . I developed novel micro-inverter technology for solar energy application that lead to the foundation of [REDACTED]

directly employs more than 50 people in the U.S., Europe and Asia and has plans to grow further in the coming months.

stated:

[The petitioner] and I have worked together on a number of research projects since we got acquainted in 2000 during our doctoral research studies at Our collaboration has continued to date, as evidenced by our involvement at where we are both part of the research, development and product teams.

In my opinion even today [the petitioner] has already made noticeable contribution to the industry in the United States through his technology contribution at and his portfolio of patents that have introduced new knowledge in the renewable energy sector.

provided no further details about the petitioner's work or its impact on the field.

The petitioner submitted copies of United States, United Kingdom, and international patent applications naming the petitioner as an inventor of various pieces of electrical equipment. An alien cannot secure a national interest waiver simply by demonstrating that he or she holds a patent. Whether the specific innovation serves the national interest must be decided on a case by case basis. *NYSDOT* at 221 n.7.

The director issued a request for evidence (RFE) on July 23, 2013. The director instructed the petitioner to "establish, through documentary evidence . . . a past record of specific prior achievement which justifies projections of future benefit to the national interest." The director acknowledged the petitioner's submission of patent applications, but stated: "there does not appear to be any evidence showing the actual issuance of a patent to the petitioner."

In response, the petitioner documented the approval of some of his patent applications. The petitioner also submitted a printout of an article the petitioner wrote for an online publication. The petitioner wrote: "has been able to achieve something that has defeated many design teams in the industry; a micro inverter design that will give high efficiency, will be manufacturable in volume at a viable price point and that will run with minimal maintenance for the life of the PV [photovoltaic] module."

The petitioner showed that his company has attracted startup funds and venture capital. The petitioner submitted a copy of a certificate congratulating (which later became) "[o]n becoming the £30,000 winner" of the £50K Business Creation Competition 2002/2003. The certificate named five entrepreneurs, including the beneficiary.

A February 23, 2009 due diligence report from Professor [REDACTED] [REDACTED], a venture capital firm, reported on a meeting between Prof. [REDACTED]; officials, including the petitioner. [REDACTED] commented on technical aspects of the company's products and proposals, and concluded: "The Enecsys solution clearly is the most elegant and probably the most stable solution I have seen so far. . . . [T]he micro-inverter is definitely a brilliant product." The petitioner did not comment on this submission, except to note that it identifies him as the company's chief technical officer.

An October 3, 2011 press release from the [REDACTED] stated, in part:

[REDACTED], a spinout company from the Department of Engineering and the leader in reliable, long-life solar micro inverter systems for residential and commercial applications, has secured a further £25 million (\$41 million) in equity financing to invest in its growth plan . . . for the largest private equity raised by any European cleantech company, so far, in 2011. . . .

[The petitioner] and [REDACTED] continue to lead the company's technology development together with two other alumni from the Department [REDACTED]

[REDACTED] and its patented technology was developed here at the Department. The company develops, manufactures, and markets world-leading, highly reliable, grid-connected solar micro inverters and monitoring systems for residential and commercial photovoltaic systems. . . . The [REDACTED] micro inverter represents a breakthrough in inverter design for residential and commercial solar PV installations as its technology has, for the first time, eliminated components that limit inverter life. Additionally the [REDACTED] micro inverter enables solar PV systems to harvest between 5% and 20% more energy; it makes planning and installation of PV systems easier and safer due to the elimination of high voltage DC wiring, and it enhances system optimization by monitoring the performance of each solar module.

The press release identified [REDACTED] which had commissioned [REDACTED] due diligence report, as "an existing [REDACTED]"

The director denied the petition on September 4, 2013. The director acknowledge the intrinsic merit of the petitioner's occupation, but found: "it does not appear that the beneficiary's work or achievements are national in scope, but rather are limited to the beneficiary's employer. It appears the main goal of the beneficiary's employment is to grow and produce a profit for the employer." The director stated:

[W]hile . . . the [witness] letters praise the beneficiary's work and indicate generally that the beneficiary's work has promising possibilities; they do not indicate that the

beneficiary's contributions have enjoyed widespread implementation in the field. Without more definitive evidence of the beneficiary's work actually being implemented, it cannot be held for certain that the beneficiary has risen above his peers.

The director also determined that the petitioner had not established the significance of the evidence submitted in support of the petition. The director stated, for instance, that while the petitioner has patented his work, "there is no evidence to suggest that the patented materials have been applied, marketed and accepted by the intended audience to such an extent that the inventor has elevated, separated or distinguished himself from other members of the discipline."

On appeal, the petitioner submits copies of some previously submitted materials, as well as internal documents that establish his role within the company. The petitioner states: "I believe due consideration was not given to some of the key evidence for this case. . . . The company I founded, directly as a result of technological innovation, already has presence in the United States on a national level." The petitioner claims that micro-inverters are sold nationwide in the United States."

The record contains no documentary evidence of claimed national presence, but there is nothing inherently local about the manufacture and sale of advanced technology. Similar businesses already exist with national distribution, and therefore it is not mere speculation to assert that the benefit arising from the design of such technology is national in scope. The director's finding to the contrary on this particular point is withdrawn.

The petitioner has submitted evidence that he has created patented inventions and secured venture capital to fund is primarily a technology company," its "progress . . . has mostly hinged" on the work of engineers including himself. The petitioner's work designing solar energy technology possesses substantial intrinsic merit and its benefit is national in scope. These factors, however, meet only the first two prongs of the three-pronged *NYS DOT* national interest test. There is no blanket waiver for professionals in the petitioner's specialty. To meet the third prong of the *NYS DOT* test, he must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219 n.6. Evidence that the company exists and conducts business is not sufficient evidence of influence on the field.

Agreements submitted on appeal substantiate the petitioner's assertion that he is "under obligation not to publish sensitive information that would compromise the company's competitive position." The petitioner's commitments to safeguard Enecsys's intellectual property explain the lack of published articles by the petitioner, but such articles are not the only means by which the petitioner could influence the field. The petitioner's products could, for instance, attract coverage in independent trade media, but the petitioner has not established such coverage. A press release from the university where he founded is not sufficient in this regard; it amounts to promotional material rather than independent coverage.

That press release indicated that “[redacted] has recently launched its products in Europe and North America.” The petitioner filed the petition more than 16 months after the October 2011 issuance of that press release, but the record contains no evidence about the company’s performance in the United States or elsewhere during that interval.

The petitioner states: “partly as a result of [redacted] went on to invest capital in [redacted]. . . [T]he uniqueness of what I do is judged by the experts who[m] the investors bring in. Typically a lot of money is involved in an investment round and an endorsement by external experts is as valuable as a publication, if not more so.” The record shows that Prof. [redacted]; report helped to persuade venture capitalists to invest in Enecsys, but the record contains no independent (non-promotional) evidence to show that [redacted] stands out in the solar energy industry, for instance by significantly decreasing the price of solar energy systems, significantly increasing their reliability and efficiency, or increasing the use of such systems to a greater extent than pre-existing industry growth trends would have predicted.

Entrepreneurs and inventors can qualify for the national interest waiver, but there is not blanket waiver to exempt them from the *NYSDOT* provisions. Starting and running a successful business is not, by itself, sufficient grounds for granting the waiver.

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. *NYSDOT* at 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 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 record shows additional grounds for denial. The AAO may identify additional grounds for denial beyond what the Service Center identified in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The USCIS regulation at 8 C.F.R. § 204.5(k)(3) states that the petition must include documentation showing that the alien is a professional holding an advanced degree or an alien of exceptional ability in the sciences, the arts, or business:

(i) 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.

(ii) To show that the alien is an alien of exceptional ability in the sciences, arts, or business, the petition must be accompanied by at least three of the following:

(A) 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;

(B) 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;

(C) A license to practice the profession or certification for a particular profession or occupation;

(D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;

(E) Evidence of membership in professional associations; or

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

One need not qualify for both of the above classifications, but the petitioner claimed both. The director, in the denial decision, did not discuss the evidence that the petitioner submitted to meet the above requirements. Instead, the director made a summary finding “that an advanced degree or exceptional ability is required by the occupation, and that the beneficiary holds the required advanced degree.”

The petitioner holds three foreign degrees, but has not submitted an evaluation to establish their equivalency to U.S. degrees. With respect to exceptional ability, the petitioner’s evidence directly

addresses only two of the six evidentiary standards listed above. The petitioner's academic degrees address the regulation at 8 C.F.R. § 204.5(k)(3)(A), and the prize from [REDACTED] appears to constitute recognition of the type described at 8 C.F.R. § 204.5(k)(3)(F). Thus, the petitioner has not submitted *prima facie* of exceptional ability, and his academic documentation is insufficient. The issue is not whether the degrees are likely to be equivalent to U.S. degrees, but whether the petitioner has submitted the necessary evidence to that effect. Evidence of eligibility may exist, but the petitioner has not provided it. Therefore, the petitioner has not established eligibility for either of the two underlying classifications that he seeks.

Also, the USCIS regulation at 8 C.F.R. § 204.5(k)(4)(ii) requires that a petitioner seeking to apply for the exemption must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate. Form ETA-750B is now obsolete, but sections J, K and L of the successor form, ETA Form 9089, fulfill the same purpose. The record does not contain either version of this required document, and therefore the petitioner has not properly applied for the national interest waiver.

The AAO will dismiss the appeal for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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.