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U.S. Citizenship
and Immigration
Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JAN 28 2008

EAC 06 110 50107

IN RE: Petitioner:
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.

Mari Pluyson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which 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 an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as an "advocate/lawyer." The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment 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 had 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 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 holds a Bachelor of Laws, a Master of Arts degree in Political Science and a Master of Arts degree in Islamic Studies all from the University of the Punjab in Pakistan. The petitioner also has a Master of Law from the University of Karachi. All of the above education was evaluated in the aggregate as equivalent to a baccalaureate from a regionally accredited institution in the United States plus one year of graduate study. The director did not contest that petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree.

Throughout the proceeding, the petitioner has also claimed eligibility as an alien of exceptional ability. On appeal, counsel asserts that the director erred in failing to consider this claim. Whether or not the

petitioner may qualify as an alien of exceptional ability is moot, however, because the director accepted that the petitioner is a member of the professions holding an advanced degree. The "alien of exceptional ability" classification normally requires an alien employment certification. Section 203(b)(2)(A) of the Act, 8 U.S.C. § 1153(b)(2)(A).

While the petitioner's claims regarding exceptional ability are moot, we note that they are extremely tenuous. For example, the petitioner relies on his license to practice law in Pakistan to meet the professional license criterion set forth at 8 C.F.R. § 204.5(k)(3)(ii)(C). A license to practice a profession, by itself, shall not be considered sufficient evidence of exceptional ability. Section 203(b)(2)(C) of the Act, 8 U.S.C. § 1153(b)(2)(C). Rather, the evidence submitted to meet the regulatory criteria must be indicative of a degree of expertise significantly above that ordinarily encountered in the field. 8 C.F.R. § 204.5(k)(2)(definition of exceptional ability). A license that is required to practice in the field is not indicative of a degree of expertise significantly above that ordinarily encountered in the field. Moreover, the petitioner seeks employment as an "advocate/lawyer" in the United States. The petitioner has not established that his foreign law license allows him to practice as an "advocate/lawyer" in the United States or, if it does, that it sets him above those who are licensed to practice law in the United States.

The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest. Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "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).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states, in pertinent part:

> The Service 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 Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Commr. 1998)(hereinafter "NYSDOT"), 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. *Id.* at 217. Next, it must be shown 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.

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. *Id.* at 219. 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. *Id.*

As stated above, the petitioner has repeatedly asserted that his exceptional ability warrants a waiver of the alien employment certification process in the national interest. As stated above, "exceptional ability" is not, by itself, sufficient to cause for a national interest waiver; the benefit which the alien presents to his or her field of endeavor must greatly exceed the "achievements and significant contributions" contemplated in the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F). *Id.* at 218. *See also id.* at 222 (exceptional ability by itself does not justify a waiver of the alien employment certification requirement; thus, arguments hinging on the regulatory criteria for that classification are not dispositive.)

We concur with the director that the petitioner proposes to work in an area of intrinsic merit, exporting U.S. goods to Asia and Africa. The director did not contest that the *proposed* benefits of his work, increased exports from the United States and improved economic conditions in Asia and Africa, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Id.* at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." *Id.* at 221. Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.*

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra element of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

Initially, the petitioner submitted a handwritten eleven-page letter that is minimally legible. The first part of the letter merely recounts the petitioner's education and employment history. Section 8, entitled "Evidence Of Recognition For Achievements And Significant Contributions to the Industry or Field by Peers, Government Entities Or Professional Or Business Organizations," discusses the petitioner's observations of the "European Economic Community" (European Union or EU), his intention to write two books about the EU, and his belief that African and Asian nations would benefit from a similar agreement.

Section 9 of the petitioner's initial letter is entitled "How the Alien Will Make A Living As a Self-Employed Lawyer, International Trade Consultant & Industrial Development Advisor." The petitioner begins by asserting that the United States, due to its size, economy, form of government and manufacturing base, is in an excellent position to serve as a source of industrial development projects, equipment, machinery, credit and "finance facilities" for Africa and Asia. These projects would lead to the "eradication of poverty." The petitioner proposes to "promote and negotiate the export marketing" of United State products and services and asserts that his commitment to Africa and Asia has been ongoing for three years.

The petitioner submitted: (1) his education credentials, (2) his 1983 admission to the Punjab Bar Council, (3) his certificate for completion of an English as a Second Language course, (4) his 2001 readmission to the Punjab Bar Council, (5) his 1994 certificate from the U.S. Department of Agriculture (USDA) confirming his completion of a USDA "training program" entitled "Designing and Managing Integrated Agricultural and Rural Development Programs," (6) his "Service Certificate" confirming employment as the Deputy Secretary of the Pakistan Central Cotton Committee, Karachi from January 1987 to December 1999, (7) the duties of that position, (8) evidence of pay increases, (9) a response letter from the Deputy Director of Britain's Economic Affairs Division wishing the petitioner success in promoting African and Asian economic cooperating and referring him to the division's website and that of the EU and (10) a letter from the petitioner to "The Presidents / The Prime Ministers, Of All Nations in Africa and Asia" noting the significance of the EU and urging a similar cooperation among African and Asian nations.

On July 24, 2006, the director issued a request for additional evidence. Specifically, the director requested evidence of how the petitioner would benefit the national interest to a greater extent than a U.S. worker with the same minimum qualifications, including letters from independent references. In response, the petitioner asserts that the alien employment certification process should be waived because it is a long process that would "delay in export of marketing of industrial equipments from the United States to countries of Africa and Asia and loss of foreign exchange." The petitioner further asserts that a U.S. worker would not have his experience as a "Promoter of Afro-Asian Economic Community, Industrial Development Advisor and International Trade Consultant." The petitioner asserts that his 13 years of experience as a Deputy Secretary, including the promotion of Pakistani cotton, resulted in an understanding of international trade and the export market. The petitioner also purports to be researching the American legal system, the EU, African and Asian

economic communities and business and industrial issues in Africa and Asia with the intention of writing books on these subjects. Finally, the petitioner notes that he requested, in September 2006, that the economic counselors of African and Asian nations provide him with information about their future development projects.

In response to the director's notice, the petitioner submitted a September 25, 2006 letter addressed to "The Economic Counsellors of Embassies of all African and Asian countries in Washington, D.C., USA" requesting "information about [their] country[s]'s future industrial development programs so that [the petitioner might] be able to manage and negotiate for procurement and export of required industrial development projects plants and factories from the United States of America for installation in" their countries. The petitioner also submitted evidence of his employment prior to 1982, his own self-serving statement chronicling his employment history and a "Character Certificate" from a retired secretary of the Pakistan Central Cotton Committee confirming the petitioner's employment with that committee and praising his character and professionalism. The petitioner did not submit letters from independent references as requested.

The director denied the petition, concluding that the petitioner had not "presented clear evidence to show that his accomplishments are an indicator of future benefit to the United States. Moreover, the petitioner has not influenced the field of endeavor."

On appeal, the petitioner reiterates his employment history and asserts that the director "has not exercised his discretion judiciously in processing this case." More specifically, the petitioner asserts that the alien employment certification process is not "a viable option." The petitioner further states that he demonstrated that his past accomplishments benefited Pakistan by promoting cotton. Further on, the petitioner states:

> The petitioner-appellant got experience of promotion of export marketing of Pakistan cotton crop during his service period with the Pakistan Central Cotton Committee[,] a department of the Government of Pakistan as Deputy Secretary. The petitioner-appellant will use this his [sic] experience of promotion of export marketing in the United States. He will promote and negotiate for export marketing of industrial equipments, plants, machinery and services, from the United States to the developing countries of Africa and Asia, worth of [sic] billions of dollars, as an International Trade Consultant/Lawyer."

The petitioner submits documentation relating to the importance of exports to the U.S. economy, which the director did not contest. As stated above, however, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT,* 22 I&N Dec. at 218.

We concur with the director that the petitioner has not demonstrated sufficient success in the field he plans to pursue. The petitioner has not demonstrated any experience with marketing technology or

equipment to developing countries. While the petitioner may have been pursuing this intention for several years, he has not demonstrated any interest from any African or Asian nation or that he has connections with African and Asian business leaders. The fact that the petitioner has sent letters *to* African and Asian government leaders and representatives does not demonstrate their reciprocal interest in his proposals. Moreover, the petitioner has not demonstrated that he is an expert on the EU model and is a respected authority for how that model could be applied in Africa or Asia. For example, the petitioner's only contact with the EU was to contact them for background information and to receive a response advising him to get the information from the Internet, information that is available to any individual. In addition, he has not authored well-received published articles or books on applying the EU model to Africa or Asia or on exporting technology or equipment to those continents; he has not demonstrated that any U.S. developer or manufacturer has expressed an interest in utilizing his services and he has not submitted letters from high-level U.S. government officials supporting the petition.

While the petitioner appears to have experience marketing Pakistani cotton more than five years before the petition was filed, he has not demonstrated that this experience is easily transferable to promoting the export of U.S. technology and equipment to Africa and Asia. Moreover, he has not demonstrated unique success marketing cotton. For example, the petitioner has not documented that Pakistani exports of cotton increased during his tenure more than at other times or that he influenced others involved in the export and promotion of agricultural products.

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 alien employment 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 the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.