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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: MAR 15 2010
SRC 08 092 53919

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
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 (AAO) 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 a collegiate assistant coach. 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.

On appeal, the petitioner submits a statement. For the reasons discussed below, we uphold the director's finding that the petitioner has not established that a waiver of the alien employment certification process is in the national interest. Specifically, while we do not question the intrinsic merit of the petitioner's work, the petitioner has not demonstrated that the benefits of his work will be national in scope or that he has influenced track and field coaching as a whole.

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 Master's degree from Arkansas State University. The director did not contest that the petitioner qualifies as a member of the professions holding an advanced degree. At 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 (Nov. 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 (Comm'r. 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.*

The director did not contest that the petitioner works in an area of intrinsic merit, coaching track and field. The next issue is whether the proposed benefits of the petitioner's work would be national in scope. While the director did not explicitly address this point, the director did note the lack of letters from national organizations. More discussion of this issue is warranted.

The initial petition was supported by evidence of the petitioner's accomplishments as a track and field athlete. The petitioner did not explain how he would benefit the national interest as a coach. In response to the director's request for additional evidence, the petitioner asserted that the prospective national benefit would be to provide his "knowledge at the services [*sic*] of the young student

athletes who look at me as their role model." More specifically, he explains that he will (1) provide knowledge "at the service of the America[n] people by coaching students of Arkansas State University," (2) work at little cost to a U.S. employer because he will earn money through competition, (3) pay taxes, (4) improve the educational ability of student athletes through his leadership skills and (5) help the American people "through a program called 'Mini Track Meet.'"

Regarding the last point, the petitioner explains that during summer breaks, with the assistance of the head coach at Arkansas State University, he organizes a "mini track and field meet for the children of Jonesboro" designed "to improve the physical fitness and educational awareness of the children in and around Jonesboro." The petitioner submitted a letter from [redacted] at Arkansas State University, explaining the petitioner's volunteer role at the university's mini track meets for young children. The petitioner also submitted letters from students at Arkansas State University affirming that the petitioner inspires them athletically and academically. The petitioner also submitted a grant proposal submitted to The Kerr Foundation to provide cultural education to international students and the children of migrant workers in and around Jonesboro. On appeal, the petitioner focuses entirely on the mini track program as his means to benefit "the American people."

NYSDOT, 22 I&N Dec. at 217, n.3, determined that the alien in that matter would provide benefits that are national in scope but provided the following additional guidance on this issue:

> In reaching this conclusion, we note that the analysis we follow in "national interest" cases under section 203(b)(2)(B) of the Act differs from that for standard "exceptional ability" cases under section 203(b)(2)(A) of the Act. In the latter type of case, the local labor market is considered through the labor certification process and the activity performed by the alien need not have a national effect. For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Id.

Similar to the examples provided above, a single coach coaching students at a single university and volunteering for a local summer program for students in the immediate area provides benefits that are so attenuated at the national level as to be negligible. That Arkansas State University may attract students from outside Arkansas does not change our analysis. The petitioner would still be coaching locally at a single university such that his national impact would be negligible. Volunteering for the mini track program is akin to a lawyer providing pro bono services and cannot be considered an

activity that will provide benefits that are national in scope. Finally, every employee is obligated to pay taxes. As the payment of taxes does not set the petitioner apart from any other employee, it cannot serve as a basis for waiving the alien employment certification process in the national interest. Thus, the petitioner has not established that the benefits of his work will 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. On appeal, the petitioner references the supplemental note at 56 Fed. Reg. at 60900, quoted above. Specifically, he notes that the application of national interest should be flexible but acknowledges that he must make a showing significantly above that necessary to prove the prospective national benefit required of all aliens seeking to qualify as aliens of exceptional ability. The petitioner then asserts that the bases of his waiver request are his advanced degree and his "extraordinary" abilities. Section 203(b)(2) of the Act normally requires an alien employment certification for both aliens of exceptional ability and members of the professions holding an advanced degree. Thus, merely demonstrating an advanced degree or exceptional ability as defined at 8 C.F.R. § 204.5(k)(3)(ii) is an insufficient reason to waive that requirement in the national interest. *NYSDOT,* 22 I&N Dec. at 218, 222. Moreover, the petitioner has not explained how his degree in a field unrelated to the area in which he claims he will benefit the national interest warrants a waiver of the alien employment certification process that is normally required for advanced degree professionals.

Finally, a vague claim of "extraordinary" ability is also not a basis for waiving the alien employment certification process. Section 203(b)(1)(A) of the Act creates a separate classification for aliens of extraordinary ability and requires sustained national or international acclaim. The petitioner did not file the petition under that classification and does not claim to enjoy sustained national or international acclaim as a coach. At issue is whether the petitioner has demonstrated his eligibility for a waiver based on the factors set forth in *NYSDOT,* 22 I&N Dec. at 217-18.

While the application of national interest should be flexible, eligibility for the waiver must ultimately 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." 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 221.

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 burden 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.

As stated above, the petitioner has documented his achievements as a track and field athlete. While the petitioner proposes to continue competing, he claims that he will benefit the national interest as collegiate coach and through his volunteer activities with the mini track summer program. While a track and field athlete and a coach certainly share knowledge of track and field, the two rely on very different sets of basic skills. Thus, an influential career in competitive athletics does not necessarily predict national benefits as a coach.[1] Regardless, while the petitioner's athletic achievements may be inspirational to his teammates, the record lacks evidence that the petitioner is an influential track and field athlete at the national level. For example, his recognition and individual media coverage is all inherently local. Similarly, as noted by the director, the letters supporting the petition are all from local individuals who know the petitioner personally.

Regarding the petitioner's experience as a coach, the record contains evidence from his supervisor and athletes he has coached attesting to his ability. These letters do not explain how the petitioner has influenced the field of track and field coaching at the national level. For example, the record lacks evidence that the petitioner is frequently sought to provide coaching lectures at various venues around the United States or has published influential papers on track and field coaching. While the petitioner's volunteer services for the inherently local mini track program is commendable, the petitioner seeks an employment based visa and, as such, must establish that his employment will benefit the national interest.

Finally, the grant proposal submitted does not relate to coaching but cultural education. Moreover, the record contains no evidence that the petitioner has any experience providing such cultural education or that he received the grant he requested.

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.

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[1] *See Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002) (upholding a finding that athletic competition and coaching are not the same area of expertise in the context of section 203(b)(1)(A)).