



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: [Redacted] Office: NEBRASKA SERVICE CENTER Date: AUG 22 2000

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)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Associate Commissioner for Examinations 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 special education teacher. 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 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.

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. -- The Attorney General may, when he deems it to be in the national interest, waive the requirement 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 an M.Ed. degree from [REDACTED] and thus qualifies as a member of the professions holding an advanced degree. The remaining issue 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 Service 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 Service regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

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 Dept. of Transportation, I.D. 3363 (Acting Assoc. Comm. for Programs, August 7, 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 she 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.

In a statement accompanying the petition, the petitioner discusses her philosophy and approach to the field of special education and states, in part:

From my special education experience, I have learned so much about the children with and without disabilities of the United States. At times, I felt I functioned as a member of this large extended families as I showed my deep concern over the conditions of children and the extent of family breakdown in this country. I firmly believe that for people with disabilities, special education, especially the early childhood special education can make positive difference in their lives.

The earlier the education intervention is employed, the better their quality of lives will be. For the society, this means that there will be more productive and enjoyable members.

Several witness letters accompany the petition. [REDACTED] Ed.D., Professor of Special Education, [REDACTED] describes the petitioner's performance in three graduate courses he taught and indicates the petitioner received an "A" in each class. Dr. [REDACTED] further states that the petitioner "has a positive personality, an enthusiasm for teaching, the creative thinking skills, ability to communicate, the strong academic knowledge, the vision to understand the basic issues of children's rights to an adequate education, the organizational and management skills to direct a well disciplined classroom and she has the curriculum planning and instructional competencies to make a significant contribution to individual students with disabilities and to her class as a whole."

[REDACTED] Associate Professor, Special Education, [REDACTED] states that the petitioner "exhibited a very good knowledge and understanding of the nature and needs of persons with exceptionalities across the life-span, attitudes essential to working with persons with exceptionalities, and delivery of services appropriate to meeting their needs." [REDACTED] Ph.D., Associate Professor, [REDACTED] describes the petitioner as "a mature, conscientious, neophyte educator who exhibited dedication and enthusiasm for her chosen profession."

The field of education clearly has intrinsic merit. The burden is on the petitioner to show how her work at one school can have an appreciable effect, at the national level, on the field of education. However exemplary may be the manner in which the petitioner runs her classroom, the direct impact from the petitioner's work is limited to the students in that classroom. It cannot credibly be argued that the petitioner substantially serves the national interest, beyond what is expected in her profession, simply by being a competent special education teacher.

The director requested further information and evidence to establish that the petitioner "will prospectively benefit the United States" at a national level. It is noted that every qualified teacher brings a local benefit. Therefore, simply establishing that the petitioner's presence is beneficial to her own students does not demonstrate that the petitioner should be exempt from the job offer/labor certification requirement which normally attaches to the visa classification sought.

In response, the petitioner has submitted an additional letter. [REDACTED] Director of Personnel, [REDACTED] County Public Schools, repeats assertions by previous witnesses regarding the petitioner's specific duties at the school and states that the

petitioner "has contributed significantly to the education of persons with special needs."

In a personal statement, the petitioner describes at length her background and teaching method, but does not explain how she intends to have an impact extending beyond the classroom where she teaches. Hypothetical assertions regarding future achievements by former students are highly contingent on factors beyond the petitioner's control and cannot constitute credible evidence of a national impact.

The director denied the petition, stating that the petitioner's work was of significant benefit only to her own students, and that therefore such benefit was negligible at the national level.

On appeal, the petitioner reiterates her contention that special education teachers are in short supply in the United States.

This office does not dispute the overall importance of a high-quality education for U.S. special needs students, but it does not follow that the petitioner's competence as a special education teacher entitles her to an exemption from basic requirements of the visa classification she seeks. While she refers to a shortage of qualified special education teachers, a shortage of qualified workers in a given field, regardless of the nature of the occupation, does not constitute grounds for a national interest waiver. Given that the labor certification process was designed to address the issue of worker shortages, a shortage of qualified workers is an argument for obtaining rather than waiving a labor certification. See Matter of New York State Dept. of Transportation. The petitioner in this case has not explained why she, more than others in her field, should be exempt the job offer/labor certification requirement.

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, U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.