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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536



Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

JAN 11 2002

File: [Redacted] Office: Texas Service Center Date:

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:



PUBLIC COPY

INSTRUCTIONS:

This is the decision 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 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 that 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS



Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and 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 clinical psychologist. 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.

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.A. degree in Psychology, and a doctorate in Education (Guidance), both from the University of the Philippines. The 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. 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 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 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.

The petitioner's initial submission consisted primarily of the petitioner's resume and copies of documentation pertaining to her educational credentials and licensure. While these documents establish that the petitioner is qualified to practice as a clinical psychologist, they do nothing to establish that the petitioner's work serves the national interest to a greater extent than other qualified psychologists. The petitioner's career choice does not inherently qualify her for a national interest waiver; there is no blanket waiver for clinical psychologists.

The director requested further evidence that the petitioner has met the guidelines published in Matter of New York State Dept. of Transportation. In response, the petitioner has submitted various documents as well as a request for additional time to submit



further documentation from overseas. The regulation at 8 C.F.R. 103.2(b)(8) states "the applicant or petitioner shall be granted 12 weeks to respond to a request for evidence. Additional time may not be granted." In any event, the record does not contain any supplementary submission. We will, of course, give due consideration to the documents which the petitioner has timely submitted.

Counsel states that the petitioner's "entry as a Legal Permanent Resident would greatly improve the health care of the United States. She is a Doctor of Psychology." This last claim is patently false. The petitioner's highest degree in Psychology is a Master of Arts (M.A.); her doctoral degree is a Doctor of Education (Ed.D.) degree, as the record plainly and unambiguously shows. The petitioner does not hold a doctorate in Psychology.

Counsel describes the petitioner's work:

She has worked for the past 8 years counseling young victims who have been physically and sexually abused. She has also worked with children who are brain injured. For 6 years she worked as a Staff Psychologist for the Harris County Mental Health and Mental Retardation Department from 1984 to 1990. . . . She served hundreds of Harris County residents in their mental health problems.

The record contains no documentation regarding her treatment of patients, either to substantiate counsel's claims or to establish that the petitioner has achieved results beyond what could be expected of any given competent psychologist. The petitioner submits several documents relating to her attendance at seminars and workshops, but these activities appear to represent nothing more than mandatory continuing education activities that the petitioner must attend if she is to keep her professional license. (Several of the training certificates specify that they represent a certain number of continuing education credits.)

The director denied the petition, acknowledging the intrinsic merit of the petitioner's occupation but concluding that the petitioner has submitted nothing to show that she is anything more than a competent psychologist.

On appeal, counsel states:

[The petitioner] specializes in Pain Management. Her patients are from all over the U.S. and she has performed miracles for patients where no other medical provider could help.

Individual U.S. Citizens from all over the U.S. have had agonizing pain relieved forever by the work of [the petitioner]. . . .

The Service erred in classifying [the petitioner] as a "therapist." The [petitioner] is a Licensed Psychologist and the evidence clearly shows this.

The director's use of the term "therapist" in place of "psychologist" is trivial and there is no indication that the director's choice of language had any influence on the fundamental outcome of the decision.

With regard to counsel's other claims on appeal, the record contains no evidence of any kind that the petitioner attracts patients from throughout the United States who "have had agonizing pain relieved forever." The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaiqbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). In this particular instance, counsel's credibility is already suspect because of the earlier claim that the petitioner is a "Doctor of Psychology."

Furthermore, prior to the appeal, the petitioner had never claimed to have "forever" relieved the pain of patients "from all over the U.S." Counsel cannot reasonably fault the director for failing to take into consideration claims which had not yet been made.

On appeal, counsel states that a brief is forthcoming within 30 days. To date, nearly three years after the filing of the appeal, the record contains no further submission and a decision shall be made based on the record as it now stands.

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.

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.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.