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Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

[redacted]

File: WAC 00 168 54231 Office: California Service Center Date: JAN 21 2003

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)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

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

Elizabeth Gaynard
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, California 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. Under Part 6 of the Form I-140, the petitioner indicated that she is seeking employment as a college instructor in early childhood education. The petitioner's work involves training students to qualify as childcare workers. 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.
> >
> > > (i) Subject to clause (ii), 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.
> > >
> > > (ii) Physicians working in shortage areas or veterans facilities.

The director did not dispute that the petitioner 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, 22 I&N Dec. 215 (Comm. 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.

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. 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 sought. 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 note 6.

In a statement accompanying the initial filing, the petitioner describes how she will serve the national interest:

> My qualifications and experience will improve education and training programs for U.S. children and under-qualified workers. I have advanced qualifications in Higher Adult Education and also Early Childhood Education. My background is in training early childhood teachers and childcare workers. This combination of my qualifications, experience and skills supports the fact that I will improve the education and training

programs for children in the United States and help under-qualified workers gain professional training.

It cannot suffice for the petitioner to state that she possesses a unique combination of "qualifications, experience and skills." The issue in this case is whether the petitioner will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. The petitioner must demonstrate a past history of significant accomplishment in early childhood/adult education having some degree of measurable influence on one or both of those fields.

The petitioner further states: "There is a proven need for my expertise in the United States. Recently, I have been selected as a finalist for interviews for the position of instructor in a number of community colleges in the United States for the Fall 2000 semester."

In support of the petition, the petitioner submitted evidence pertaining to the regulatory criteria for aliens of extraordinary ability set forth at in the Service regulation at 8 CFR 204.5(h)(3). For example, as evidence of a nationally recognized award for excellence in her field of endeavor, the petitioner submitted her Master's Degree issued by the University of Auckland (New Zealand) in April 1996. University study is not a field of endeavor, but, rather, training for future employment in a field of endeavor. Awards or degrees based on educational achievement at a given university are institutional or local in nature and do not constitute nationally recognized "awards for excellence in the field of endeavor."

The petitioner submitted additional evidence showing that she served in the position of technical editor/moderator for her employer, the Open Polytechnic of New Zealand. The petitioner also provided evidence of her authorship of two research papers. The record, however, contains no evidence that the publication of one's work is a rarity in the educational field, nor does the record demonstrate that educational scholars have heavily cited or relied upon the petitioner's findings.

The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment."

Thus, this national organization considers publication of one's work to be "expected," even among individuals who have not yet begun "a full-time academic and/or research career." When judging the influence and impact that the petitioner's work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other educational scholars have relied upon the petitioner's findings. Few or no citations of an alien's work suggests that that work has gone largely unnoticed; it is therefore reasonable to question how widely that alien's work is viewed as a

significant influence in her field.

The petitioner also submitted witness letters in support of the petition. Adele Graham, Instructor, University of Auckland, and co-supervisor of the petitioner's master's thesis, states: "The combination of [the petitioner's] professional qualifications and practical experience in early childhood along with her higher degree in adult education makes her an excellent candidate for any position of responsibility in the field."

Deryn Cooper, Senior Lecturer, Auckland College of Education, also supervised the petitioner's master's thesis. Deryn Cooper offers a similar letter of support noting that the petitioner "has a rich practical and professional base which gives her the ability to work with practitioners as professionals in the field."

Pursuant to *Matter of New York State Dept. of Transportation*, an alien cannot demonstrate eligibility for the national interest waiver simply by establishing a certain level of training or education that could be articulated on an application for a labor certification.

Adele Graham asserts that the petitioner's master's thesis "was an excellent piece of research" and that it "could be profoundly useful for those who train beginning teachers, or who work with those who have recently graduated." A letter from Ruth Mansell, Teacher Registration Board, thanks the petitioner for sending Ms. Mansell a copy of the petitioner's thesis and refers to it as "a comprehensive body of research." The petitioner argues that Ms. Mansell's letter is evidence of her "impact on policy change in early childhood teacher education," but the letter from Ruth Mansell mentions nothing of policy changes resulting from the petitioner's findings. We note here that Ms. Mansell returned the petitioner's thesis and there is no evidence that the Teacher Registration Board as an entity ever considered implementing the petitioner's findings. The letters from Adele Graham and Ms. Mansell offer no information as to how the petitioner's findings have already influenced the educational field.

The petitioner submits additional letters from her former employers including Philippa Hobbs of Hobbs House Private Kindergarten and Marie Field, Section Manager for Education, Open Polytechnic of New Zealand. Their letters fail to demonstrate a past history of significant accomplishment on the part of the petitioner. The witnesses describe the petitioner's job duties, educational expertise, and value to various educational projects, but they provide no evidence of the petitioner's influence on the field beyond her employers or the individuals that she directly taught or evaluated.

We note that the analysis followed 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 instructor at one community

college would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. The evidence offered by the petitioner fails to demonstrate her ability to impact the U.S. educational system or influence the educational field as a whole.

The director requested further evidence that the petitioner had met the guidelines published in *Matter of New York State Department of Transportation*. In response, the petitioner submitted copies of documentation already provided, a report from the New Zealand Polytechnic Program Committee discussing the accreditation of educational programs offered by the Open Polytechnic of New Zealand, evidence of the petitioner's service as a technical editor/moderator for her employer (the Open Polytechnic of New Zealand), a research grant awarded to the petitioner for $1295, evidence of workshops run by the petitioner, and a research paper presented by Margaret Turnbull of the Auckland College of Education that cites the petitioner's master's thesis.

A single citation by an individual from Auckland College of Education (where the petitioner received her degree) hardly qualifies as evidence of significant influence in the educational field. Few or no citations of an alien's work suggests that that work has gone largely unnoticed; it is therefore reasonable to question how widely that alien's work is viewed as being noteworthy. The petitioner has not shown that her work has captured significant attention from independent educators or academic scholars beyond her own employers or educational institutions.

The petitioner also submitted evidence of a research presentation at the Annual Conference of the National Association for the Education of Young Children (November 2000) and a letter from the State of California Commission on Teacher Credentialing dated August 4, 2000 stating that the petitioner is academically eligible for a Child Development Master Teacher Permit. This evidence came into existence subsequent to the petition's filing. *See Matter of Katigbak*, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

The evidence submitted does not show how the petitioner's influence as an instructor, which appears mostly limited to her students and the instructors she evaluates in New Zealand, has the potential to benefit the national interest of the United States. Nor does the evidence demonstrate that the petitioner would serve the national interest to substantially greater degree than educational professionals in the United States possessing the same minimum qualifications.

The director denied the petition, stating that the petitioner failed to establish that a waiver of the requirement of an approved labor certification would be in the national interest of the United States. The director's decision noted the complete absence of letters from educational institutions and organizations in the United States attesting to the petitioner's individual importance to the national interest.

On appeal, the petitioner argues that the accreditation report from the New Zealand Polytechnic Program Committee and the letter from Ruth Mansell, Teacher Registration Board, distinguish the petitioner from others in her field. As the director has already noted, neither of these entities

represent U.S. educational interests and they provide no specific statements addressing how the petitioner would serve the national interest of the United States to a substantially greater degree than other similarly qualified U.S. workers. By law, advance degree professionals and aliens of exceptional ability are generally required to have a job offer and a labor certification. With regard to Congressional intent, a statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d 1289, 1295 (5th Cir. 1987). Congress plainly intends the national interest waiver to be the exception rather than the rule.

In referring to the accreditation report from the New Zealand Polytechnic Program Committee, the petitioner states: "It is from a significant national body and it is commending the petitioner, thus it is evidence that the petitioner has exceptional ability as an early childhood education distance learning expert." In accordance with the statute, exceptional ability is not by itself sufficient cause for a national interest waiver. The benefit that the petitioner presents to 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).

The petitioner further states "[n]ational organizations of the highest standing do not comment on the work of an average college instructor." We note here that the accreditation report merely reflects that the Open Polytechnic of New Zealand was seeking certification and approval of its Early Childhood Education and Diploma in Teaching (Early Childhood Education) programs from the governmental entity charged with evaluating such programs. The report's introduction specifically states that the New Zealand Polytechnic Program Committee was attempting to "decide whether to recommend approval and accreditation" of educational programs offered by the Open Polytechnic of New Zealand. The report, an analysis of the Open Polytechnic's course offerings, lists the petitioner as one of several other individuals with which they met and does not single out the petitioner as having a significant impact on New Zealand's educational system. Furthermore, the report suggests several actions that must be taken prior to accreditation and it made no statements indicating that accreditation was actually granted. The report, therefore, falls well short of distinguishing the petitioner from others in the educational field.

The petitioner cites several decisions approving national interest waiver petitions. The petitioner's attempt to apply previous Service findings to the current case is flawed. There can be no meaningful analysis of the decisions to determine the applicability of the same reasoning to other cases. Furthermore, the approvals in question do not represent published precedents and therefore are not binding on the Service in other proceedings.

The petitioner concludes by stating that she "will contribute positively to the U.S." General statements as to the petitioner's potential to make future contributions cannot suffice to demonstrate her eligibility for a national interest waiver. The assertion that the petitioner is capable of future success does not persuasively distinguish the petitioner from other competent educators and scholars. The petitioner offers no specific evidence that her contributions as instructor or educational scholar are substantially greater than the contributions made by others in the educational field.

The record in this case describes the petitioner's work rather than offering a valuation of its overall significance to the field of early childhood education. The record does not establish the extent to which other educators have relied upon the petitioner's methods and research findings as a model, or that a significant number of other educational institutions have implemented the petitioner's teaching techniques resulting in a significant improvement upon their existing methods. The record contains no evidence showing that the petitioner's individual contributions have significantly impacted the educational field or have national implications. Although the petitioner may have authored a few conference reports, the weight of this evidence is diminished by the lack of direct evidence that these reports have influenced her field.

In this case, the petitioner has failed to submit evidence setting herself apart from others in the field of early childhood education. The available evidence does not persuasively establish that the petitioner's past record of achievement is at a level that would justify a waiver of the job offer requirement that, by law, normally attaches to the visa classification sought by the petitioner.

At issue is whether this petitioner's contributions to the field of early childhood/adult education are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification she seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. Without evidence that the petitioner has been responsible for significant achievements in her field, we must find that the petitioner's assertion of prospective national benefit is speculative at best.

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.