U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-B-M-V-

DATE: NOV. 25, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an elementary school teacher, seeks classification as a member of the professions holding an advanced degree, and 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. *See* Section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. LAW

Section 203(b) of the Act states, in pertinent part:

> (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 Director determined 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 the pertinent 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).

Matter of New York State Dep't of Transp., 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that she 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.

While the national interest waiver hinges on prospective national benefit, a petitioner must demonstrate a past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's assurance that she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term "prospective" is included here to require future contributions by the petitioner, rather than to facilitate the entry of a foreign national with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on July 19, 2013, at which time she was working as a kindergarten teacher for in Maryland. The record indicates that she holds Master's degrees in Elementary Education and Special Education and has worked for since 2007, having previously taught elementary school in the Philippines since 1982.

Documentation supporting the Form I-140 included evidence of the Petitioner's credentials and a "Narrative Resume" in which she provided a detailed description of her training and experience. She submitted copies of certificates and awards she received during her education and employment, including "Resourceful Teacher of the Month," "Innovator and Creative Strategies Award," "The Resourceful Teacher Award," and a five year service award from her former employer, a certificate of scholarship from her university, and an "Outstanding Service" certificate from the

Supporting evidence also included copies of letters from the Petitioner's current and former colleagues, supervisors, and students, attesting to her dedication and effectiveness as a teacher.[1] For instance, principal of , stated in a November 16, 2011, letter that the Petitioner "is an asset to " and that most of her students are performing at or above grade level. In a November 7, 2011, letter, assistant principal of indicated that the Petitioner was an "exceptional educator" with integrity who was "well read and abreast on the latest trends, developments, methods, and techniques in her field of study." concluded that the Petitioner supported school-wide projects and was enthusiastic about taking on leadership roles. Each of the letters praised the Petitioner's work ethic and teaching techniques.

In addition, the Petitioner submitted evidence that she was featured in an August 3, 2008, article, about extensive hiring of teachers from the Philippines and the sacrifices made by those teachers. That piece was summarized in a second article, " published in on 2008. The Petitioner provided copies of personal letters she received in response to the articles.

The Director issued a request for evidence (RFE) on May 14, 2014, requesting additional documentation to establish the Petitioner's eligibility under the analysis set forth in *NYSDOT*. She was asked, in part, to confirm that her work "will impart national-level benefits," and that she has a past record of specific prior achievement with some degree of influence on the field as a whole.

In a letter responding to the RFE, the Petitioner cited the No Child Left Behind Act of 2001 (NCLBA), Pub. L. 107-110, 115 Stat. 1425 (Jan. 8, 2002), and recent federal education initiatives, as evidence that "closing the achievement gap" is a national priority. She asserted that as a "Highly Qualified Teacher" under NCLBA, she "plays a primary role" in achieving that goal. She further explained that her proposed employment would "benefit the U.S. economy" and "improve education." In a separate personal statement, the Petitioner indicated that her work offers "the potential for a marked improvement in literacy among students that will result in more high school graduates and career-ready individuals." The RFE response letter also maintained that the NCLBA "trumps the Labor Certificate" because, if successful, it will lead to greater student achievement and "eventually eliminate competition from foreign workers."

The Petitioner submitted new letters from two colleagues who previously wrote on her behalf, each of whom confirmed that her teaching has had a positive impact on her students' achievement. In support of these statements, she provided 2014 testing data showing her kindergarten class' performance in language arts over the course of the year. The RFE response also included articles about the importance of math and science education and a shortage of special

[1] While we discuss only a sampling of these letters, we have reviewed and considered each one, although we note that the letter from Assistant Principal of is unsigned and, accordingly, has little evidentiary value. Regardless, that letter is similar to the ones quoted in this decision.

education teachers, and documentation relating to the education laws and policies discussed in the Petitioner's letter.

On November 3, 2014, the Director denied the Form I-140, finding that the Petitioner did not show the proposed benefits of her work are national in scope or demonstrate a past record of achievement with a degree of influence on the field as a whole. The Director therefore concluded that she had not established that an exemption from the requirement of a job offer and labor certification would be in the national interest of the United States.

In her brief on appeal, the Petitioner states that U.S. Citizenship and Immigration Services (USCIS) "erred in giving insufficient weight to the national educational interests enunciated in the [NCLBA] as the guiding principle rather than [*NYSDOT*]." She notes that Congress passed the NCLBA three years after the issuance of *NYSDOT* as a precedent decision, and asserts that it did so "to serve as guidance to USCIS in granting legal residence to 'Highly Qualified Teachers.'" According to the Petitioner, "the [NCLBA] and the Obama Education Programs, taken collectively, provide the underlying context for the adjudication of a national interest waiver application made in conjunction with an E21 visa petition for employment as a Highly Qualified Teacher in the public education sector."

The brief alternately asserts that the record establishes the Petitioner's eligibility under the *NYSDOT* framework. It states that the proposed benefit of her work is national in scope because she will serve "the national educational interest of closing the achievement gap," and that she has provided "overwhelming evidence" of her past achievements. The brief further maintains that factors such as "the 'Privacy Act' protecting private individuals" make it "impossible" for the Petitioner to produce material comparing herself to other qualified workers, and that the Director's application of the third prong of *NYSDOT* is "tantamount to [requiring] extraordinary ability," a separate visa classification with its own evidentiary requirements.

III. ANALYSIS

With regard to the applicability of the *NYSDOT* analysis, the Petitioner provides no support for the assertion that the NCLBA modified or superseded that precedent decision with regard to teachers. She identifies no specific legislative or regulatory provisions that exempt educators from *NYSDOT* or reduce its impact on them, and she cites no direct support for the claim that Congress intended for the NCLBA to affect the adjudication of national interest waiver applications. In contrast, section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub. L. 106-95 (Nov. 12, 1999), specifically amended the Act by adding section 203(b)(2)(B)(ii) to create special waiver provisions for certain physicians. The Petitioner has not shown that the NCLBA contains a similar legislative change. As USCIS does not have discretion to ignore binding precedent under 8 C.F.R. § 103.3(c), the Petitioner's eligibility must be determined according to the analysis set forth in *NYSDOT*.

We find the Petitioner has not shown that the benefits of her proposed work are national in scope. As discussed above, she affirms that her work will further the national interest of "closing the achievement gap." The federal education statutes and initiatives cited by the Petitioner address the

intrinsic merit of education, which the Director did not dispute, and they describe national goals. They do not, however, state or imply that the work of one teacher significantly contributes to those goals, nor has the Petitioner demonstrated that her work as an individual will further those objectives on a nationally significant level. This finding is consistent with *NYSDOT*, which cited an elementary school teacher as an example of a meritorious occupation that would lack the requisite national scope to establish eligibility.

Finally, under the third prong of the *NYSDOT* analysis, a petitioner must demonstrate that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 218. Such a demonstration does not, as the Petitioner contends, require specific evidence of the accomplishments of other individuals in her field, nor does it require her to meet evidentiary requirements for extraordinary ability, as found at 8 C.F.R. § 204.5(h)(3). Rather, a petitioner must have a past record that "justifies projections of future benefit to the national interest" by showing that he or she has had "some degree of influence on the field as a whole." *Id.* at 219, n. 6. In this instance, the petitioner has submitted documentation of her work at the local level, including letters and testing data that reflect the positive impact she has had on her own students. The record does not establish, however, that she has had a broader influence within her field.

IV. CONCLUSION

A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or individual of exceptional ability should be exempt from the requirement of a job offer based on national interest. For the reasons discussed above, we find the record insufficient to confirm that either the scope of the Petitioner's proposed work or her past record of achievement is at a level sufficient to waive the job offer requirement which, by law, normally attaches to the visa classification sought by the Petitioner. While a petitioner need not demonstrate notoriety on the scale of national acclaim, the national interest waiver contemplates that his or her influence be national in scope. *NYSDOT*, 22 I&N Dec. at 217, n.3. Considering the record, the Petitioner has not established by a preponderance of the evidence that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of M-B-M-V-*, ID# 14525 (AAO Nov. 25, 2015)