U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-K-D-

DATE: AUG. 10, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a teacher and autism education researcher, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is normally attached to this immigrant classification. *See* § 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director, Texas Service Center, denied the petition. The Director found that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of a job offer would be in the national interest.

The matter is now before us on appeal. In her appeal, the Petitioner argues that she satisfies the national interest waiver requirements.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate his or her qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

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. –
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> > (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.
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> (B) Waiver of job offer –
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> > (i) National interest waiver. . . . the Attorney General[1] 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.

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 Department of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or 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 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 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner's assurance that he or she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. *Id.* at 219. Rather, a petitioner must justify projections of future benefit to the national interest by establishing a history of demonstrable achievement with some degree of influence on the field as a whole. *Id.* at 219, n.6.

II. ANALYSIS

The Petitioner initially filed the Form I-140, Immigrant Petition for Alien Worker, without any supporting documentation. In part 6 of the Form I-140, the Petitioner listed her job title as "Teacher" and indicated that she seeks to "develop groundbreaking treatments for autistic

[1] Pursuant to section 1517 of the Homeland Security Act of 2002 ("HSA"), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA "shall be deemed to refer to the Secretary" of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

disorders." According to the Petitioner's ETA Form 9089, Application for Permanent Employment Certification, provided in response to the Director's notice of intent to deny the petition (NOID) and her curriculum vitae submitted on appeal, the Petitioner worked as a public school teacher at in Florida from July 2008 until August 2013. In the Fall Semester of 2013, the Petitioner began working at the as a graduate teaching assistant while pursuing her doctorate in exceptional education.

The Petitioner received a master of science degree in education from in 2004. The Director determined that the Petitioner qualified 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 according to the three-pronged analysis set forth in *NYSDOT*.

A. Substantial Intrinsic Merit

At the time of filing, the Petitioner was a and doctoral student in the exceptional education Ph.D. program at The Petitioner indicated that she is "an innovative teacher and educational program developer for students with autism spectrum disorder" (ASD). She further explained that she is "presently using her expertise for the development and expansion of novel teaching and assessment methods to increase the knowledge base and understanding of educational approaches and curriculums that engender improvement in the verbal, cognitive and behavioral skills of children along the autism spectrum." The submitted documentation shows that the Petitioner's work as a teacher, program developer, and educational research scholar is in an area of substantial intrinsic merit. Accordingly, the record supports the Director's determination that the Petitioner meets the first prong of the *NYSDOT* national interest analysis.

B. National in Scope

The Petitioner has demonstrated that the proposed benefit of her autism education research and program development has national scope, as the results from her work are disseminated to others in the field through conferences and journals. Therefore, we agree with the Director's determination that the Petitioner meets the second prong of the *NYSDOT* national interest analysis.

C. Serving the National Interest

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. The Director determined that the Petitioner's impact and influence on her field did not satisfy the third prong of the *NYSDOT* national interest analysis.

In addition to documentation of her published work, conference presentations, professional memberships, and academic credentials, the Petitioner submitted various reference letters discussing her work in the field. For example, a general education lead instructor at the stated that he became acquainted with

the Petitioner through a relative who worked with her at noted that the Petitioner provided an "excellent classroom environment for her students" with ASD by introducing a pet therapy program, and by obtaining grants for a system and ten video flip cameras. With respect to the aforementioned classroom initiatives, indicated that the Petitioner's teaching efforts helped students gain awareness of others and improve their social interactions both in the classroom and outside of school, but he did not provide any specific examples of how the Petitioner's work has impacted the field as a whole.

professor and project coordinator of the exceptional education program at mentioned that the Petitioner's accomplishments at included securing partnerships such as the contest, the project, and the (students with ASD plant and maintain a landscape of plants, trees, and a pond). While the Petitioner may have instituted the aforementioned partnerships at her school, there is no indication that she was the original developer of the partnerships (rather than just a program participant) and that her involvement produced national benefits in the field of ASD education or has otherwise influenced the field as a whole.

In addition, credited the Petitioner with starting a pet therapy program at An October 2009 press release prepared by the Petitioner for and a December 2009 article in entitled described the Petitioner's pet therapy program for special education students at the school. While the school newspaper article indicated that was "the first to experiment with a pet therapy program," there is no documentary evidence showing that the Petitioner's program or any of her other teaching initiatives were implemented beyond her school district such that they had a national effect or otherwise affected the field as a whole.

a teacher of students with autism at stated that the Petitioner "provided resources and collaborated with special education and general education teachers at and across further explained that the Petitioner received a donation of digital cameras and then offered one "to each teacher of students with autism across but did not indicate how the Petitioner's work has altered teaching practices outside of or has otherwise influenced the field as a whole.

a school psychologist in who worked with the Petitioner at noted: "While serving students on the Autism Spectrum in her classroom, [the Petitioner] consistently demonstrated knowledge and competence in using evidence-based practice." further discussed the Petitioner's professional skills and teaching strategies, but did not explain how the Petitioner's work has affected the field as a whole. Although education is in the national interest, the impact of a single schoolteacher in one school would not be in the national interest for purposes of waiving the job offer requirement. *See NYSDOT*, 22 I&N Dec. at 217, n.3.

As evidence of her membership on an advisory committee to the the Petitioner provided a resource guide authored by entitled of the resource guide lists the Petitioner among 17 "members of the Advisory Committee." Additionally, the letter from stated that the Petitioner was "a member of the The Petitioner does not explain how her participation in the aforementioned advisory committees has influenced the field as a whole. Whatever the Petitioner's specific role in these committees, their impact has not been shown to extend beyond Florida.

Many of the Petitioner's references discussed her recent journal articles and conference presentations concerning self-awareness in students with autism. For example, an assistant professor of special education at alumna, and coauthor of the Petitioner, discussed the Petitioner's findings in (published online September 29, 2013), (accepted but not yet published), and (under review for publication). In addition, mentioned the Petitioner's presentations at conferences such as the in Japan (September 2015) and the in (January 2015). All of the Petitioner's research findings contained in the record were published or presented after the filing date of the Form I-140 on August 1, 2013. Eligibility, however, must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Accordingly, we cannot consider the Petitioner's research findings that were not yet published or presented as of the filing date and, thus, had not been disseminated in the field, to establish her eligibility at the time of filing.

Furthermore, regarding the Petitioner's published and presented work, there is no presumption that every published article or conference presentation demonstrates influence on the field as a whole; rather, the Petitioner must document the actual impact of her article or presentation. In this case, there is no evidence showing that once disseminated through publication or presentation, the Petitioner's work has garnered a significant number of independent citations or that her findings have otherwise influenced the field as a whole.

Executive Director of the indicated that the Petitioner designed activities for her organization's 2014 and 2015 in For instance, indicated that the Petitioner "organized and coordinated many programs such as[:] health, wellness, and social skills. She facilitated Virtual Avatar experiences to afford individuals with to increase their self-advocacy, and their communication skills." As the Petitioner's work for the 2014 and 2015 conferences occurred after the filing date of the Form I-140, it does not establish her eligibility at the time of filing. *Id.* Regardless, the Petitioner has not shown that her activities at the conferences have influenced the field as a whole.

an associate professor at , and , an adjunct professor at , both mentioned the Petitioner's presentations at the in 2014. In addition, a Ph.D. candidate at the and member of the board of directors, discussed the Petitioner's involvement in the 2015 in 2015 as a steering committee member, session co-leader, presentation proposal reviewer, and conference scholarship recipient. Again, we cannot consider presented work and conference activities from 2014 or later as evidence to establish the Petitioner's eligibility at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Moreover, many professional fields regularly hold meetings and conferences to present new work, discuss new findings, and to network with other professionals. Professional associations, educational institutions, employers, and government agencies promote and sponsor these meetings and conferences. Although presentation of the Petitioner's work demonstrates that she shared her original findings with others, there is no documentary evidence showing, for instance, frequent independent citation of her work, or that her findings have otherwise influenced the field at a level sufficient to waive the job offer requirement.

The Petitioner submitted letters of varying probative value. We have addressed the specific contentions above. Generalized conclusory statements that do not identify specific contributions or their impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). In addition, uncorroborated statements are insufficient. *See Visinscaia v. Beers*, 4 F.Supp.3d 126, 134-35 (D.D.C. 2013) (upholding USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field); *See also Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that an agency "may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony," but is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought and "is not required to accept or may give less weight" to evidence that is "in any way questionable"). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the petitioner's eligibility. *Id. See also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). As the submitted reference letters did not establish that the Petitioner's work has influenced the field as a whole, they do not demonstrate her eligibility for the national interest waiver.

With respect to the Petitioner's appellate submission, the letters of support and other evidence she offers concern her instructional activities and research endeavors that occurred after the Petition's filing date of August 1, 2013. For example, the Petitioner mentions how she assisted with the simulation at and provides spreadsheets detailing behavioral conditions (dated August 2015). In addition, the Petitioner submits a January 2014 meeting agenda from her work as a break out group facilitator for task force related to from September 2013 – November 2013. None of the documents presented on appeal demonstrate the Petitioner's eligibility at the time of filing and that her work has affected the field as a whole.

III. CONCLUSION

Considering the letters and other evidence in the aggregate, the record does not establish that the Petitioner's work has influenced the field as a whole or that she will otherwise serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. The Petitioner has not shown that 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 she seeks.

A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or alien of exceptional ability should be exempt from the requirement of a job offer based on national interest. Although a petitioner need not demonstrate notoriety on the scale of national acclaim, she must have "a past history of demonstrable achievement with some degree of influence on the field as a whole." *Id.* at 219, n.6. 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 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, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of C-K-D-*, ID# 17523 (AAO Aug. 10, 2016)