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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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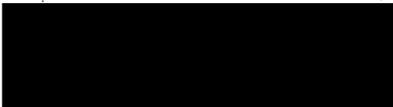
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File: EAC 97 096 50708 Office: Vermont Service Center Date: AUG 1 2001

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:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The Associate Commissioner, Examinations, dismissed a subsequent appeal. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted, the previous decision of the Associate Commissioner will be affirmed and the petition will be denied.

The petitioner seeks to classify the beneficiary 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, a preschool, seeks to employ the beneficiary as a teacher of basic computing skills to students under five years of age. 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 beneficiary 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.

The Administrative Appeals Office ("AAO"), acting on behalf of the Associate Commissioner, affirmed the director's decision in part and dismissed the appeal. The AAO also found that the beneficiary does not qualify as a member of the professions holding an advanced degree, because the beneficiary's occupation, private preschool teacher, does not require at least a bachelor's degree. See the Department of Labor's Occupational Outlook Handbook, 2000-01 edition, page 354, which states "[t]he training and qualifications required of preschool teachers and child-care workers vary widely. . . . State requirements are often minimal. Often, child-care workers can obtain employment with a high school diploma and little or no experience."

With regard to the national interest waiver, the AAO concluded that the beneficiary is a competent teacher who is making valuable contributions to the students of the petitioning school, but that the petitioner has not shown that the beneficiary's work has had any discernible wider impact. The AAO found that the petitioner had not established that a waiver of the statutory job offer requirement would be in the national interest.

8 C.F.R. 103.5(a)(2)(i)(ii) requires that a motion to reopen state the new facts to be proved at the reopened proceeding; and be supported by affidavits or other documentary evidence.

The petitioner's motion to reopen consists of several affidavits. Padmini Amarasiri, director of the petitioning school, states:

Practically, all of the parents at the day care center are working professionals and therefore are very selective in the choice of the day care for their children. They have to be assured that those who are taking charge of their children and teaching them are not high school students not dropouts but are competent professional themselves [sic]. . . .

The standard requirement for our day care center is that the teachers must have a solid background in childhood education of preferably a Montessori education which the beneficiary undoubtedly possesses.

The AAO had indicated that the minimum requirement for the beneficiary's position appeared to be "a high school diploma," a credential which is not held either by high school students or by "dropouts" who did not complete high school. The letter submitted on motion offers no explanation of what constitutes "a solid background." The letter continues:

Since we are in the cyberspace age/advance computer generation, it is essential that the children in the early stage of their life learn the use of the computers in the appropriate way. And this is being provided for by the day care center not generally found anywhere else in the country. . . .

As petitioner, we can not afford to lose the services of the beneficiary and it is of public knowledge that there is and establish [sic] dearth of competent teachers who will be able to teach children computers in day care centers.

The AAO, in its earlier decision, never contested the importance of teaching basic computer skills to children. At issue is the extent to which the beneficiary is able to address this need. If the beneficiary's work has no measurable impact beyond the few dozen students she herself teaches, then we cannot conclude that her efforts are national in scope.

With regard to the claimed shortage of teachers, the determination of such a shortage lies under the jurisdiction of the Department of Labor. 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, I.D. 3363 (Acting Assoc. Comm. for Programs, August 7, 1998).

The remaining letters on motion are from individuals whose children attend, or have attended, the petitioning school. These individuals assert that the beneficiary's "unique skills" led to an

individuals assert that the beneficiary's "unique skills" led to an "exceptionally enriching" experience for their children. Such parents certainly have an interest in ensuring the highest quality child care for their children. It does not follow, however, that the beneficiary's credentials qualify her for an exemption from the job offer/labor certification requirement which, by law, attaches to the classification sought.

A plain reading of the statute and regulations shows that aliens of exceptional ability are generally required to present a job offer with a labor certification at the time the petition is filed, and only for due cause is the job offer requirement to be waived. Clearly, exceptional ability in one's field of endeavor does not, by itself, compel the Service to grant a national interest waiver of the job offer requirement. Even then, the AAO has already determined (in its prior decision) that the beneficiary does not qualify as an alien of exceptional ability. The petitioner has not directly addressed this finding. The petitioner appears to argue, in effect, that while the beneficiary is not an alien of exceptional ability, she is nevertheless such a good teacher that the statutory job offer requirement ought not to apply to her.

Every parent wants the best for his or her children, and every school wants to maintain a standard that inspires confidence among parents and achievement among students. These desires are natural and understandable, and an individual who advances these goals at a nationally significant level could be said to serve the national interest. The petitioner in this proceeding, however, has not shown the beneficiary's work to be significant except to the faculty and students at the petitioning school, and to the parents of those students. Congress clearly intended the labor certification requirement to remain in place, and the employer's subjective preference cannot override that requirement.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the previous decision of the Associate Commissioner will be affirmed, and the petition will be denied.

ORDER: The Associate Commissioner's decision of March 18, 1999 is affirmed. The petition is denied.