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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

Public Copy

File: EAC 99 107 51023 Office: Vermont Service Center Date: 11 DEC 2001

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:

[redacted]

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, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

In this decision, the term "prior counsel" shall refer to Andrew Fair of Gleit & Fair, who represented the petitioner prior to the filing of the appeal. The term "counsel" shall refer to the present attorney of record.

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 at New Hope Guild, Tikvah. The petitioner also works part-time at the Karen Horney Clinic. 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 a Ph.D. degree in Clinical Psychology from the California School of Professional Psychology. 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.

Prior counsel has described the petitioner's work:

> [The petitioner] is a recognized expert in the area of trauma psychology. [The petitioner] has developed a theory of childhood trauma based on the physiological model of trauma to the cell membrane. [The petitioner] was able to develop this theory based on her earlier research experience and academic training as a biochemist. . . . She has authored a number of

scientific articles concerning the physiology of the cell membrane, as well as articles and presentations on the topic of "skin-ego" traumas, which concern the psychology of trauma.

We do not dispute the intrinsic merit of psychological research and clinical practice. While the scope of her clinical practice is necessarily limited to those patients whom the petitioner treats, the petitioner's published work affords her a wider audience and thereby assumes national scope. Of course, this national scope would dissipate if the petitioner were to abandon published research in order to focus on the direct treatment of individual patients.

The petitioner submits several witness letters. Dr. Giselle Galdi, director of the Victim Treatment Center and the petitioner's supervisor at the Karen Horney Clinic, states:

> [The petitioner] is a recognized expert in the area of trauma. This is a very important area of research in psychology which relates to the intertwined implications of physical and psychological trauma, and early life trauma. This connection is significant for the understanding of coping and healing processes. . . . [The petitioner] has been successful in treating a wide range of traumatized patients such as victims of domestic violence, rape, and other forms of sexual abuse, war trauma, and victims of multiple severe physical illnesses who have previously been resistant to other therapists and other forms of treatment. . . .
>
> Her recent interest in psychic envelopes has been recognized as related to biological membranes, a scientific field in which she published and was recognized as an expert. . . .
>
> The focus of [the petitioner's] research has been perceptual distortions related to both victims and victimizers of sexual abuse and childhood trauma which may trigger enactment of childhood sexual trauma later in life.
>
> [The petitioner's] research is a pioneer attempt that challenges the difficulty of empirically measuring denial, a psychological concept, defined by an absence of behavior and perceptual distortions. In recent years, the media and the scientific community have brought to light the devastating problem of childhood sexual abuse, especially the cyclic pattern of sexual abuse which leads to recidivism. [The petitioner's] work in this area, I believe, will help victims successfully deal with anxiety caused by such a trauma, and hopefully, allow them to become productive individuals.

Professor Joseph Schlessinger, director of the Skirball Institute of Biomolecular Medicine at New York University Medical Center, was previously a professor at the Weizmann Institute of Science where the petitioner had worked as a research assistant. Prof.

Schlessinger states that he is "convinced that [the petitioner's] theoretical and practical knowledge . . . will yield significant positive benefits in numerous Americans." While Prof. Schlessinger discusses his own credentials in the study of "the mechanism of action of growth factor receptors and the intracellular signalling pathways that they transmit," he does not claim any training or expertise in clinical psychology.

Other witnesses offer similar statements. Nearly all of these witnesses have demonstrable, direct ties to the petitioner, as (for example) classmates, collaborators or professors. Witnesses frequently refer to the petitioner as "a recognized expert" in her specialty, but rather than specifying how the petitioner's work has already affected clinical psychology, they express confidence that the petitioner's findings "will be of considerable value" and "will result in diagnoses and interventions that effect a lower rate of victims of childhood trauma and abuse."

One witness whose links to the petitioner appear to be less direct is Dr. Etty Cohen, a psychoanalyst/psychotherapist and a professor at New York University (where Joseph Schlessinger is also a faculty member). Dr. Cohen states that the petitioner's research "has led to a much deeper understanding of the role that denial has in the cycle of abuse of adolescent sex offenders, and required an understanding of novel projective methods rarely found in clinical psychologists."

The petitioner submits copies of her published work. Many of these publications are in the field of biology, which the petitioner abandoned to study psychology. The petitioner has published articles, and made presentations at conferences, concerning psychology, but the record does not reflect the degree to which these publications and presentations have influenced the field. For example, the record does not establish that other researchers have heavily cited the petitioner's published work.

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 several additional witness letters and a letter in which prior counsel states:

> [The petitioner] has not only made important theoretical contributions to the field of trauma psychology, but has greatly influenced her colleagues throughout the country and aided their understanding of the treatment of trauma victims. Her theories have even been implemented in local treatment centers such as in one of the Youth Authority facilities in California for treating adolescent sex offenders.

The petitioner submits nearly two dozen additional witness letters. Several of these witnesses assert that the petitioner is nationally or internationally recognized as an expert in her field. Such

recognition, however, cannot be fully established solely on the assertions of the petitioner's employers and others who have worked relatively closely with her. Twelve of the witnesses have worked directly with the petitioner at either the Karen Horney Clinic or the New Hope Guild, Tikvah. Of the remaining witnesses, all but four practice in or near New York City. Three of the four witnesses outside of New York studied alongside the petitioner at the California School of Professional Psychology, and the fourth has known the petitioner since 1986, before the petitioner had any formal training in clinical psychology (although the petitioner had trained in expressive therapy).

Many of the witnesses couch the petitioner's value in her work with her own patients. The impact of such work is necessarily limited; the treatment of individual patients lacks national scope (although published reports of treatment can reach a wider audience).

Dr. Ron Balamuth, a clinical psychologist in New York City, states:

> Although I have not met with [the petitioner] personally, I feel that I am in a position to support her petition based on the extensive work samples, publications and curriculum vitae that she has provided me. Based on a thorough review of these materials I feel that she can offer significant scholarship, clinical expertise and academic knowledge to the area of treatment and research of trauma.

Dr. Balamuth's assertion that his opinion is based on materials that the petitioner provided to him suggests that Dr. Balamuth had no prior knowledge of, or familiarity with, the petitioner's work. This assertion, therefore, does not offer strong support for the claim that the petitioner is internationally admired in her field, as other witnesses have contended.

A number of New York-area witnesses assert that the petitioner's contributions are "well recognized," but they do not specify by whom. The first-hand evidence in the record does not point to significant recognition outside of New York.

The director denied the petition, stating that the newly-submitted witness letters do not establish that the petitioner's work is widely used, and that the petitioner has failed to establish the greater impact of her published work. The director acknowledged the intrinsic merit and national scope of the petitioner's work but concluded that the petitioner has not established the overall impact of her published work in the field.

On appeal, counsel argues that the director imposed an inappropriate burden of proof by requiring evidence that the petitioner has had a "profound" impact on her field. Counsel states that such a standard is not supported by Matter of New York State Dept. of Transportation, but counsel does not specify or cite a more appropriate standard.

Counsel states that the director should not discount statements from individuals who have worked with the petitioner, because "[t]hese are the persons who will best know the alien's work, and whose endorsement should be expected in any petition for a national interest waiver." Statements from close witnesses are not without value, and indeed they provide the best detailed discussion regarding the nature of the petitioner's work. By virtue of those witnesses' proximity to the petitioner, however, such letters cannot be the best or most direct gauge of the petitioner's greater impact. For instance, in this proceeding, a number of witnesses assert that the petitioner's work is nationally or internationally known, but nearly all of those witnesses are in New York City, and it is not clear what authority they have to attest to the petitioner's recognition in (for example) Chicago or Los Angeles. Even one New York witness apparently had to receive documents from the petitioner herself before being able to express any conclusions at all about her work. It remains that the record contains no direct, first-hand evidence to show that the petitioner's work has significantly affected the work of any clinical psychologists outside of New York, apart from individuals who studied psychology with her or knew her before she had even obtained degrees in that field.

Counsel requests oral argument in order "to address legal issues in the labor certification process . . . [that] are not discussed in any of the opinions of the AAO." Oral argument, however, is limited to cases where cause is shown. The petitioner must show that a case involves facts or issues of law which cannot be adequately addressed in writing. Counsel does not even summarize these legal issues or explain why oral argument is necessary to address them; therefore, the request for oral argument is denied. Counsel's appeal brief contains only a short discussion of labor certification.

Counsel argues that Matter of New York State Dept. of Transportation "discusses labor certification in terms of shortage of qualified U.S. workers," and that "[t]he labor certification process does not contemplate unique and pioneering contributions such as this Petitioner has made and will continue to make." The Administrative Appeals Unit, in rendering its decision in Matter of New York State Dept. of Transportation, did not conclude that labor shortage is the only issue in labor certification. Furthermore, counsel's argument is predicated on the assumption that the petitioner has made "unique and pioneering contributions." While the petitioner's witnesses may believe this to be the case (and we do not claim otherwise), we have seen no direct evidence that the petitioner has earned anything beyond a local reputation for her work. Assertions of wider influence are based on unsupported claims and inferences, such as the contention that the fact that the petitioner must be an international authority in her field because she has made conference presentations. If the petitioner's work has had significant impact on the treatment of trauma victims, then direct evidence of such impact should be available and

obtainable. Whatever counsel claims regarding the burden of proof, no quantity of letters from New York psychologists can establish first-hand that the petitioner's work is highly regarded by psychologists outside of New York. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner need not establish that she is nationally or internationally acclaimed as a leading figure in her field; such a standard is more appropriate to an alien of extraordinary ability as defined at section 203(b)(1)(A) of the Act. Still, the petitioner must demonstrate some degree of influence that transcends the purely local level, or the level that would be expected of a researcher who publishes his or her work. Publication itself is not *prima facie* of impact because publication shows only that the petitioner's work has been made available; not that the ideas therein have been implemented by others. The petitioner's own clinical work with patients, however skilled, is too highly attenuated at the national level to be considered to serve the national interest.

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.

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.