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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
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Washington, D.C. 20536

PUBLIC COPY



File: [Redacted] Office: Vermont Service Center Date: 06 DEC 2002

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:



Prevent or minimize
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.

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 he is seeking employment as a medical doctor. At time of the petition's filing, the petitioner was pursuing postgraduate medical training in psychiatry. 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 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.

The application for the national interest waiver cannot be approved. The regulation at 8 C.F.R. 204.5(k)(4)(ii) states, in pertinent part, "[t]o apply for the [national interest] exemption the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate." The record does not contain this document, and therefore, by regulation, the beneficiary cannot be considered for a waiver of the job offer requirement. The director, however, does not appear to have informed the petitioner of this critical omission. Below, we shall consider the merits of the petitioner's national interest claim.

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 brief statement accompanying the initial filing, the petitioner stated: "I am forwarding my application for a four-year position in Child and Adolescent Psychiatry. Upon completion, I intend to undertake an additional year of training in Forensic Child Psychiatry." In support of the petition, the petitioner provided his resume, educational credentials, tax returns for 1997 and 1998, and an unpublished report that he co-authored entitled "Symptom Dimensions in Schizophrenia and Mania."

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 submitted, an article appearing in *Clinical Psychiatry News* (1999) entitled "Best Jobs Will Be in Child, Geriatric Psychiatry" which mentions the "high demand" for child and adolescent psychiatrists in many regions of the United States, general information regarding the American Academy of Child and Adolescent Psychiatry, and a copy of a completed Form I-129, Petition for a Nonimmigrant Worker. In a statement accompanying his response to the director's request for evidence, the petitioner indicated the following:

I am a physician trained in Psychiatry. I am presently a fellow in Child and Adolescent Psychiatry of Schneider Children's Hospital, a member of the Long Island Jewish Medical Center, New York. I am also a member-trainee of the American Association of Child and Adolescent Psychiatry... The field of Child and Adolescent Psychiatry is in great demand, and there are not enough qualified personnel to fill up positions across the United States. With prior research experience, I'm involved in developing a protocol that will assess the effectiveness of applied behavior analysis as a treatment modality of autism and other pervasive developmental disorders.

Pursuant to Matter of New York State Dept. of Transportation, 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.

Simply being trained to practice psychiatry/medicine in the United States cannot demonstrate eligibility for the national interest waiver. The petitioner must demonstrate a past history of significant accomplishment in psychiatry/medicine having some degree of influence on the field.

The petitioner offers no evidence that "Symptom Dimensions in Schizophrenia and Mania" was ever published in a scholarly psychiatry journal. Simply providing evidence of an unpublished report offers no valuation of its overall significance to the field of psychiatry.

The documentation submitted fails to show how the petitioner's impact will extend beyond the patients he directly serves. We note that the analysis followed in "national interest" cases under section 203(b)(2)(B) of the Act requires the alien's activity to have a significant national impact. For example, while pro bono legal services as a whole serve the national interest, 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 schoolteacher in one elementary school 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 petitioner has failed to demonstrate how his influence as a psychiatrist, which appears mostly limited to his patients in New York, is national in scope. Nor has the petitioner shown that he is significantly more qualified than other medical doctors or psychiatrists 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.

On appeal, the petitioner's representative briefly argues that there is a current need for child psychiatrists in the United States. She states: "There is a big demand in the U.S. for these types of medical doctors, but not many U.S. workers are working in this field."

The petitioner submits a brief statement addressing the director's decision, copies of previously submitted documentation, and a report from the web site of the American Academy of Child and Adolescent Psychiatry describing a "critical shortage of child and adolescent psychiatrists." The petitioner cites the report, stating:

There is a dearth of my cadre of medical professionals. According to the report, the nation needs about 30,000 child and adolescent psychiatrists by the year 2000; only 20% of this number, that is only 6,300 is currently in the workforce [sic]. Being presently an H-1B [nonimmigrant] visa holder, and having been trained by taxpayer's money, I believe granting me permanent resident status will enable me to contribute my quota to easing pains of children and adolescents, as well as their parents, seeking help for varying mental health problems.

Pursuant to published precedent, 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. 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.

We note Congress' creation of a blanket national interest waiver for certain physicians. The creation of Section 203(b)(2)(B)(ii) of the Act demonstrates Congress' willingness to grant such blanket waivers. The petitioner has not shown, however, that he is eligible for the blanket waiver under the regulations at 8 C.F.R. 204.12. He has not established that the proposed area of employment and his medical specialty, psychiatry, have been designated a medically underserved area or a mental health shortage area as required by 8 C.F.R. 204.12(a). He has not fulfilled the special filing requirements for physicians set forth at 8 C.F.R. 204.12(c). Thus, he has not proved he is eligible for the national interest waiver for certain physicians under the Act.

The petitioner's work appears limited to the patients he directly serves in New York, thus localizing its impact. The petitioner has failed to show the importance of his contributions relative to those of other similarly qualified psychiatrists/medical doctors. The record in this case describes the petitioner's work rather than offering a valuation of its overall significance to the

field of psychiatry. The record does not establish the extent to which other psychiatrists have relied upon the petitioner's treatment methods and research findings as a model, or that the petitioner has implemented his own new psychiatric therapies which represent a significant improvement upon existing methods.

In this case, the petitioner has failed to submit evidence setting himself apart from others in the field of psychiatry/medical science. 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 which, by law, normally attaches itself to the visa classification sought by the petitioner.

At issue is whether this petitioner's contributions to the field of psychiatry/medical science are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he 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 the field of psychiatry/medical science, 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.