

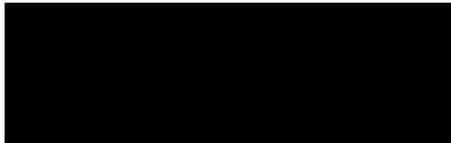


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U.S. Department of Justice  
Immigration and Naturalization Service

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



06 DEC 2002

File: [Redacted]

Office: Nebraska Service Center

Date:

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: [Redacted]

**PUBLIC COPY**

**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, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

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 seeks to employ the beneficiary as a high school math teacher. 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.

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 beneficiary holds a Master's degree in Math Education from Northern Illinois University. The beneficiary's occupation, teaching, falls within the pertinent statutory definition of a profession as stated in section 101(a)(32) of the Act. While the director's decision included ambiguous language on this matter, the director ultimately concluded that the beneficiary does qualify as a member of the professions holding an advanced degree. We concur. Thus, we need not consider the petitioner's appellate arguments on this issue regarding the beneficiary's work towards a Ph.D.

The remaining issue 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.

We concur with the director that the beneficiary works in an area of intrinsic merit, teaching high school math. The director then concluded, “the impact of an individual teacher, working at one school or at several schools within a district, is so attenuated at the national level as to be negligible.” On appeal, the petitioner argues that the beneficiary will have a national impact as his students “progress through their education.” This argument is not persuasive. Matter of New York State Dept. of Transportation, *supra*, specifically states, “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.” *Id.* at 217, note 3. We do not find that a high school teacher has any greater claim to having a national impact.

The petitioner also argues that the beneficiary has given, and continues to be invited to give, presentations at national conferences. A petitioner must establish the beneficiary’s eligibility at the time of filing. Matter of Katighak, 14 I&N Dec. 45, 49 (Comm. 1971). The record does not reflect that the beneficiary had already given presentations at national conferences at the time of filing or that such presentations were influential.

It remains, then, to determine whether the beneficiary will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. 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 beneficiary's contributions in the field are of such unusual significance that the beneficiary 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. A petitioner must demonstrate that the beneficiary has a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, note 6.

Initially, the petitioner submitted evidence that the beneficiary completed his teaching certification requirements and received a favorable final evaluation highly recommending him as a math teacher. The petitioner also submitted reference letters from the beneficiary's professors at Northern Illinois University. Professor Biswa Nath Datta rates the beneficiary as one of the best teaching assistants he has had and recommends him for future teaching positions. He provides similar information in a second letter submitted in response to the director's request for additional documentation. Professor Gregory Ammar confirms that the beneficiary has served as a teaching assistant for him and will be offered another teaching assistantship in the next academic year. Professor Ammar states that he only assigns teaching assistants who have an "ability to perform well in this capacity" and that he has been "satisfied" with the beneficiary's performance. Cindy Stecher, the beneficiary's professor for "Instruction in the Mathematics Curriculum for Grades 6-12" praises the beneficiary's ability to take the initiative and asserts that she purchased the beneficiary's "resource" as a "class resource." Professor Helen Khoury provides general praise of the beneficiary's abilities as a math student and teacher. Professor John Beachy asserts that the beneficiary was "one of the top two students in the class" with a strong commitment to his work and capable of engaging in "interesting conversations on a wide range of topics."

Gary Gislason, one of the beneficiary's professors at the University of Alaska, Fairbanks, asserts that the beneficiary was "in the top ten percent of approximately fifty recent undergraduate mathematics majors and graduate students from the various sciences with whom I am acquainted." D. A. Bartlette of the Department of English at the University of Alaska, Fairbanks expresses his appreciation to the beneficiary for coming to that institution to teach a class on *Ramayana* and *Mahabharata*.

The above letters are all from the beneficiary's professors and supervisors. While such letters are important in providing details about the beneficiary's role in various projects, they cannot by themselves establish the beneficiary's influence over the field as a whole.

The beneficiary was selected by the Department of Mathematical Sciences as a recipient of an "institutional membership" in the Mathematical Association of America in recognition of his past performance in the mathematical sciences. Recognition of achievements or contributions by one's peers is one of the criteria for classification as an alien of exceptional ability, a classification that normally requires a labor certification. We cannot conclude that meeting one of the requisite three

criteria for that classification is evidence that the labor certification requirement should be waived in the national interest.

In response to the director's request for additional documentation, the petitioner asserted that the beneficiary has submitted two articles for publication, that his project under Professor Helen Khoury "ranked among the top three professional projects in the nation and [was] commended by Education Secretary Wiley." The petitioner also asserted that the beneficiary was scheduled to speak at upcoming conferences, a claim reiterated on appeal. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). The petitioner did not provide any evidence regarding the ranking of the beneficiary's project or the commendation by Secretary Wiley.

Moreover, as stated above, a petitioner must establish the beneficiary's eligibility at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. See Matter of Katigbak, *supra*. The record does not establish that the beneficiary had already published articles or had already attended conferences at the time of filing. Even if he had, it is generally expected that doctoral students write a dissertation, which is often published. It is the Service's position that publication of scholarly articles is not automatically evidence of influence; we must consider the reaction to those articles in the field. As such, the petitioner would need to establish that the beneficiary's articles were widely cited.

Finally, we will address the petitioner's legal arguments. Initially, the petitioner asserted that "this position falls under that of shortage occupations." In response to the director's request for additional documentation, the petitioner asserted that while the beneficiary was the most qualified individual who applied for the position with the petitioning school, the waiver of the labor certification requirement was "not being sought on the basis of shortage of workers." On appeal, the petitioner once again states that there is a "shortage of qualified applicants" for the position offered to the beneficiary. In light of the petitioner's inconsistency regarding a shortage of qualified teachers, we simply note that the issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. Matter of New York State Dept. of Transportation, *supra*, at 221. The petitioner also asserts that the length of the labor certification process would cause the school to hire a less qualified teacher if the waiver is not granted. Nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process. *Id.* at 223.

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.