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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

[Redacted]

File: [Redacted] Office: Nebraska Service Center

Date: 28 FEB 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:

[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
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 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 or an alien of exceptional ability. The petitioner seeks employment as a teacher/multicultural educator. 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 petition was filed with the Nebraska Service Center on January 20, 1998. The first issue to be decided is whether the petitioner is a member of the professions holding an advanced degree, and/or an alien of exceptional ability. In the decision denying the petition, the director stated: "The alien petitioner holds two baccalaureate degrees and has over five years of teaching experience. Therefore, the beneficiary is eligible for classification as a member of the professions holding an advanced degree." The record does not support this conclusion.

The petitioner holds a Bachelor of Science degree in Elementary Education from St. Cloud State University, but has not demonstrated at least five years of progressive post-baccalaureate experience in teaching. The regulation at 8 CFR 204.5(k)(2) states that an advanced degree is a U.S. academic or professional degree or a foreign equivalent degree above the baccalaureate level. The equivalent of an advanced degree is either a U.S. baccalaureate or foreign equivalent degree followed by at least five years of progressive experience in the specialty.

On July 30, 1998, the director requested an evaluation of the petitioner's educational credentials.

In a response letter dated October 20, 1998, counsel stated:

[The petitioner] does not have the equivalent of an advanced degree since she would need five years progressive experience subsequent to her bachelor's degree to have the equivalent of a master's or advanced degree. For that reason, she is seeking qualification of the national interest waiver as a person of exceptional ability.

The evaluation report submitted from the Foundation for International Services indicates that the petitioner's "employment experiences in teaching and dance during various periods from August of 1990 to June of 1998" totaled only 3 ½ years. Thus, the petitioner claims eligibility not as an advanced degree professional, but as an alien of exceptional ability.

Because the beneficiary is not an advanced-degree professional, the beneficiary cannot receive a visa under section 203(b)(2) of the Act unless she qualifies as an alien of exceptional ability. The regulation at 8 C.F.R. 204.5(k)(3)(ii) sets forth six criteria, at least three of which an alien must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business. These criteria follow below.

We note that the regulation at 8 C.F.R. 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered." Therefore, evidence submitted to establish exceptional ability must somehow place the alien above others in the field in order to fulfill the criteria below; qualifications possessed by every member of a given field cannot demonstrate "a degree of expertise significantly above that ordinarily encountered." For example, every physician has a college degree and a license or certification; but it defies logic to claim that every physician therefore shows "exceptional" traits.

An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability.

The beneficiary, as noted above, holds a Bachelor of Science degree in Elementary Education from St. Cloud State University. The petitioner also holds a Bachelor of Arts degree from the University of Karachi "equivalent to two years of university-level credit from an accredited college or university in the United States." Additionally, the petitioner has completed the equivalent of a "management training program from a private school in the United States." Given her additional education and academic achievement in elementary education at St. Cloud State University (graduating cum laude and receiving various student awards), we conclude that the beneficiary's academic background is exceptional when compared to other teachers.

Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought.

Nothing in the record indicates that the petitioner has at least ten years of teaching experience.

A license to practice the profession or certification for a particular profession or occupation.

The record contains a standard teaching license issued by the State of Minnesota on August 26, 1997. This license states that in order to move to a "five-year continuing license," the petitioner must verify one full year of teaching experience. On appeal, the petitioner submits an updated standard teaching license, issued on September 10, 1999, reflecting her certification as an elementary education teacher until July 1, 2004. Thus, at the time of filing of the petition on January 20, 1998, the petitioner had only been licensed to teach for a period of about five months and she did not possess the "five-year continuing license" typical of more experienced teachers. A petitioner must establish eligibility at the time of filing. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971). It is not clear how an individual who had not yet completed her first full year as a licensed school teacher can demonstrate a degree of expertise beyond other more experienced teachers. Further, a standard teaching license is ordinarily required by public schools for all entry-level teachers and possessing it clearly does not set one apart from other teachers in the school system. Qualifications possessed by every member of a given field cannot demonstrate "a degree of expertise significantly above that ordinarily encountered." The standard teaching license submitted by the petitioner thus fails to satisfy this regulatory criterion.

Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability.

Evidence of membership in professional associations.

The record contains no evidence to fulfill the above two criteria.

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

Counsel claims that the petitioner meets this criterion through letters submitted from the Mayor of the City of St. Cloud, the St. Cloud Human Rights Coordinator, the Equal Employment Opportunity Program Manager for the Department of Veterans Affairs in St. Cloud, the Superintendent of Little Falls Community Schools (the petitioner's employer), the Director for Multicultural Services at St. Cloud Technical College, teacher acquaintances of the petitioner, members of the Multicultural Children's Art Connection Program (including the Full House Dance Company where the petitioner has worked), and administrators and professors from St. Cloud State University. The petitioner also submits nine local newspaper clippings describing or picturing her in various activities in the community. The petitioner is the main subject of only two of these local newspaper articles. The information submitted reflects the petitioner's various contributions to her local community and the university she attended. They describe her activities as a student, cultural diversity educator and promoter, school teacher, and local community volunteer.

We do not dispute the credibility of the petitioner's witnesses or her valued participation in various community events and organizations in and around St. Cloud, Minnesota. However, the construction of the regulations demonstrates the Service's preference for verifiable, documentary evidence, rather than subjective opinions of witnesses selected by the petitioner. There is no evidence to demonstrate the petitioner's teachings or instruction has impacted the field beyond her local acquaintances in Minnesota. We note that the record reflects little formal recognition or awards for the petitioner's work as a teacher, arising from various groups taking the initiative to recognize the petitioner's contributions, as opposed to private letters solicited from selected witnesses expressly for the purpose of supporting the visa petition. Independent evidence from outside the petitioner's local community which would have existed whether or not this petition was filed is more persuasive than subjective statements from individuals with an expressed interest in the petitioner's continued employment and involvement in community projects.

The petitioner has also presented honors and awards that she received as a student at St. Cloud State University. University study is not a field of endeavor, but, rather, training for future employment in a field of endeavor. These awards relate only to her academic accomplishments as a student, not achievements in the teaching profession, and cannot satisfy this criterion.

For the reasons explained above, the available evidence is sufficient to satisfy only one of the regulatory criteria regarding exceptional ability. The record portrays the beneficiary as a competent and dedicated teacher/multicultural educator, but the record does not establish that the beneficiary exhibits a degree of expertise significantly above that normally encountered in the occupation.

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. This issue is moot, because the petitioner is ineligible under the classification sought, but the issue will be addressed because it was central to the director's decision.

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.

At the time of filing, the petitioner was employed by the Little Falls Community Schools as a World Resource Teacher. This position involved "assisting teachers and students with multicultural activities." In a letter dated October 20, 1998, counsel indicated that the petitioner was no longer working for the school system and had returned to the Full House Dance Company of the Multicultural Children's Art Connection as a volunteer Artistic Director. Counsel claims that the petitioner will serve the national interest through "improving education and training programs for children" and "improving cultural awareness and diversity through artistic endeavors."

Hedy Tripp, Executive Director of the Multicultural Children's Art Connection, states:

[The petitioner's] uniqueness is the combination of her own heritage and abilities. Her skills and an in-depth knowledge of her country's culture set in a global perspective lends itself to the formation of a true leader and teacher. She is a role-model in this community in her capacity as Artistic Director of the Full House Dance Company, the main program of the Multicultural Children's Art Connection.

Since 1991, this program of training children of all ethnicities in the beautiful dances of their diverse universe is seen as one of the ways to nurture positive self-esteem in the school and community in an environment which is becoming increasingly racist and discriminatory. Racism is a sensitive issue here in St. Cloud, as it is in the rest of the country, but through the arts and through [the petitioner], our organization is striving to educate in an inspiring, non-threatening, fun way, a message that is serious. We have to turn around these forces of evil especially from the most vulnerable of our human population, that of our children. [The petitioner] is especially gifted in the arts and dedicated to teaching multicultural education. This organization is extremely fortunate

to have her as a volunteer leader and director.

Chuck Winkelmen, Mayor of the City of St. Cloud, states:

Over the last two years, [the petitioner] has contributed significantly in the area of Pakistan/Indian cultural awareness to our community. She has taught a dance/language class at the Cultural Arts Center in St. Cloud. [The petitioner] has been the artistic director of Full House Dance Company whose participating children have performed at various locations and events throughout our area. She has been a dedicated leader in the future programming of cultural diversity events and education.

Dr. Kerry Jacobson, Superintendent of Schools for Little Falls, states:

We have 3700 students in grades K-12. This school year, we are using [the petitioner] as a World Resource Teacher. In this capacity, she is assisting teachers throughout the district with multicultural awareness activities regarding her home country of Pakistan. [The petitioner] is an extremely talented woman who brings her many gifts to our children each day. She also will be working with several community groups on multicultural awareness projects. We appreciate her talent very much. It would be a shame if her immigration status did not allow her to continue in these activities. We believe that this is precisely what is needed in order to make our community and our students better able to operate with diversity throughout our country and the world.

She will be working for the entire 1997-98 school year in a program that has been successfully operating for the past eight years. Each year, we bring a World Resource Teacher to our school district in order to help educate our students and community to the many cultures of the world. The program has received the majority of its funding from the Musser Fund located in Minneapolis, MN.

The World Resource Teacher Program has been widely disseminated as a model for other school systems across America. We have presented information regarding the program at several state and national conferences including conferences of the National School Boards Association, the American Association of School Administrators, and the Association for Supervision and Curriculum Development. Each time the program is presented, it receives many compliments from schools around the nation and several inquiries regarding the establishment of programs in other locations. The World Resource Teacher Program has served as a model for similar efforts throughout America. It was due to [the petitioner's] efforts and assistance that my program met the federally mandated unsubsidized employment goal. As a result of her contribution and success, it is my intention to continue referring our participants to her. Through her help, strength, training and continued working relationship, I know both programs can benefit society, that is, to promote and self-empower individuals to become self-sufficient.

The petitioner has submitted letters from her employers, coworkers, colleagues, professors,

community leaders, students' parents, and various other acquaintances. These letters, however, essentially limit the petitioner's impact to her students in Minnesota. Similarly, while her Student Leadership Award from St. Cloud University and brief attention in the local media reflect her involvement in the Minnesota community, they fail to demonstrate sufficient evidence of the petitioner's achievements and significant contributions to the field of multicultural education as a whole.

While Dr. Kerry Jacobson credits the petitioner with providing "assistance" in helping the World Resource Teacher Program meet its federally mandated unsubsidized employment goal, this merely indicates that the program met one of several requirements to continue receiving governmental funding. Simple compliance with federal regulations is insufficient to demonstrate a significant achievement in one's field. Further, it appears that Dr. Kerry Jacobson is the driving force behind the World Resource Teacher Program and there is no evidence to demonstrate that the petitioner has ever presented information to the National School Boards Association, the American Association of School Administrators, or the Association for Supervision and Curriculum Development. It should also be noted that the World Resource Teacher Program existed seven years prior to the petitioner's "temporary" employment under the program. The petitioner served as World Resource Teacher for only one school year and left the position in 1998.

The petitioner has offered no evidence that she has influenced the field of education as a whole. The petitioner's direct impact appears limited to the City of St. Cloud and the Little Falls School System. We do not dispute that the petitioner's work has yielded positive results in the training of her students and fellow teachers, but it has not attracted significant attention from other educators in the field beyond Minnesota. The majority of the witnesses provided by the petitioner are her acquaintances, former educators, or collaborators involved with the funding of the Full House Dance Company or World Resource Teacher Program. These individuals say little apart from discussing the success of these programs and describing the petitioner as an effective teacher/multicultural educator. The petitioner's skill as a multicultural educator, while useful to her community in Minnesota, does not appear to represent a national interest issue.

The director requested further evidence that the petitioner has met the guidelines published in Matter of New York State Department of Transportation. In response, the petitioner submits three additional letters from individuals of the St. Cloud Human Rights Office and St. Cloud Community Schools. The petitioner also submits several pamphlets, event programs, articles, and flyers from the Multicultural Task Force of St. Cloud, the Multicultural Children's Art Connection of St. Cloud, St. Cloud State University, the St. Cloud Public Library, the local paper, St. Cloud Human Rights Office, and the local chapter of the Asian American Students Association. Few of these items even mention the petitioner specifically, and none portray the petitioner as the director, keynote speaker, or event coordinator. Of the items that do mention the petitioner (as one of many participants), her role is that of a dancer or story-teller in a local town event. Further, the event dates described in these materials, such as "Racism No Way-Celebrate Today," all occurred subsequent to November 1, 1998, over nine months after the filing of the petition. See Matter of Katigbak, supra.

In her letter of support, Paula Engdahl, Human Rights Coordinator of the St. Cloud Human Rights Office, describes the petitioner's volunteer work in fostering diversity awareness in the local community by participating in events such as St. Cloud's Third Annual Human Rights Day Celebration. The two letters from the St. Cloud Community School officials describe the petitioner's coordination of a dance performance of twenty children from the Full House Dance Company for students at a local high school and her participation in various community groups. The petitioner, however, has not shown that she has made presentations to wider audiences, published scholarly articles regarding multicultural education, or had the means to disseminate new methods of cultural instruction having a significant impact outside her own community activities. The letters submitted from various witnesses attest to the petitioner's volunteer work and the success she has had with her students, but there is no indication that the petitioner's work has impacted the field of education beyond her activities in Minnesota.

Counsel argues persuasively that the petitioner's participation in multicultural educational activities possesses substantial intrinsic merit. However, counsel fails to provide evidence establishing that the petitioner's individual role, limited solely to her activities with children in the Minnesota community, is national in scope. For instance, pro bono legal services as a whole serve the national interest, but 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 the purposes of waiving the job offer requirement.

In regards to a waiver of the labor certification process, prior counsel notes the testimonial letters and newspaper articles reflecting the petitioner's local accomplishments as a student at St. Cloud State University, World Resource Teacher for the Little Falls Schools, and volunteer at the Full House Dance Company and Multicultural Children's Art Connection. Counsel states that the employment as a World Resource Teacher was "a one year appointment and thus a temporary position." Counsel adds that labor certification is inappropriate and unavailable for the petitioner because the Multicultural Children's Art Connection has limited funding and has "never paid a full time Artistic Director."

Much of the evidence submitted describes the petitioner's work as a volunteer. However, the petitioner in this case seeks an employment-based visa. The petitioner's activities that are held to be in the national interest must, therefore, derive from her employment. The national interest waiver is statutorily limited to advanced degree professionals and aliens of exceptional ability. The petitioner does not explain why the volunteer work of advanced degree professionals or exceptional aliens should be rewarded with an immigration benefit (i.e., the national interest waiver), when the comparable efforts of aliens who fall outside this visa classification cannot be so recognized. The volunteer work of a teacher/multicultural educator with an advanced degree is not inherently any more valuable or beneficial than the same work performed by another volunteer with no such degree. Therefore, fundamental fairness dictates that volunteer work outside of one's job duties, while admirable, cannot fairly be considered when adjudicating an application for an employment-based national interest waiver.

Counsel states that "the national interest would be adversely affected by the requirement of a labor certification because the U.S. would lose [the petitioner's] talents as a multicultural educator." Counsel indicates that the petitioner "has used and shared her unique experience of growing up in Pakistan and the lessons and talents she has gained from the Pakistani culture" to promote cultural diversity. However, it cannot suffice to simply state that the petitioner has useful skills or a unique background. The petitioner must establish the benefit her skills will provide to the United States will considerably outweigh the inherent national interest in protecting United States workers through the labor certification process.

The director denied the petition, stating that the record does not establish that the beneficiary would serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. As noted previously, the record does not support the director's finding that the petitioner qualifies as an advanced degree professional. Nor does the record support the director's conclusion that the proposed benefit of the petitioner's employment is national in scope. While the wording of the director's decision may be improved, it is by no means so flawed as to undermine the grounds for denial.

On appeal, counsel argues that the petitioner's "unique skills as a teacher, dancer and artistic consultant" serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. The petitioner submits three additional witness letters; a letter from the petitioner describing her unique language, dance and cooking abilities; a community service award given to the petitioner by the Mayor of St. Cloud dated June 9, 1999; a letter dated September 9, 1999, from the Girl Scouts of Land of Lakes, Minnesota, nominating the petitioner for a 1999 Women of Excellence Award; evidence of the Full House Dance Group's local performances; and three additional newspaper articles appearing in the St. Cloud Times in 1999. The awards and newspaper articles were local in nature and occurred subsequent to the filing of the petition. See Matter of Katigbak, supra. The witness letters are from acquaintances of the petitioner and offer no tangible evidence of the petitioner's contributions to the field beyond her local community. While the petitioner has proven herself to be a successful multicultural teacher, the record fails to demonstrate that her work has attracted the attention of independent educators in her field.

Because, by statute, exceptional ability is not by itself sufficient cause for a national interest waiver, the benefit which an alien presents to a given field of endeavor must greatly exceed the "achievements and significant contributions" contemplated in the regulation at 8 C.F.R. 204.5(k)(3)(ii)(F). The petitioner, through her participation in various volunteer projects, has proven herself a valuable asset to her community. The evidence submitted, however, does not reflect the petitioner's specific achievements and contributions of significance to the field of teaching/ multicultural education as a whole. There is no indication that the petitioner's activities in this regard are of substantially greater value than the efforts of countless other aliens seeking to bring their culture to an American audience. It remains that there are ethnic dance groups throughout the country, representing a vast array of cultural traditions. An alien does not qualify for a national interest waiver merely by displaying one's cultural talents in dancing, cooking and

story-telling. The petitioner's impact is limited to her former students, the students of the Full House Dance Company, and in a much less direct sense, the audiences viewing their productions. The record does not establish the extent to which other educators and instructors have relied upon the petitioner's teaching methods as a model, or that the petitioner has developed an original method that represents a significant improvement upon existing methods. No evidence has been submitted to establish the petitioner's impact upon the administration of the World Resource Teacher Program or its efforts in different states. In fact, the petitioner is no longer even employed under this program.

While the Service acknowledges the importance of diversity training and cultural awareness, 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. The broader reach of the World Resource Teacher Program, which existed seven years prior to the petitioner's employment under the program, does not establish that the petitioner herself has influenced its services outside of Minnesota. While fostering cultural understanding and diversity awareness is a national issue, it does not follow that every individual who works for this goal has made significant achievements and contributions in their field. Counsel's arguments regarding the overall importance of these issues do not single out the petitioner for the special benefit of a national interest waiver. By law, advanced degree professionals and aliens of exceptional ability are generally required to have a job offer and a labor certification. 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). By asserting that participation as a multicultural educator in these projects inherently serves the national interest, counsel for the petitioner essentially contends that the job offer requirement should never be enforced for these visa classifications, and thus this section of the statute would have no meaningful effect.

The inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner must still demonstrate that she will serve the national interest to a substantially greater degree than do others in the same field. Congress plainly intended that, as a matter of course, advanced degree professionals should be subject to the job offer/labor certification requirement. The national interest waiver is not merely an option to be exercised at the discretion of the alien or her employer. Rather, it is a special, added benefit that necessarily carries with it the additional burden of demonstrating that the alien's admission will serve the national interest of the United States. It cannot suffice for the petitioner to simply enumerate the benefits of her work. To hold otherwise would eliminate the job offer requirement altogether, except for advanced degree professionals and aliens of exceptional ability whose work was of no demonstrable benefit to anyone.

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 she 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 teaching/multicultural education, we must find that the petitioner's assertion of prospective national benefit is speculative at best. Furthermore, we cannot conclude that the petitioner has met at least three of the regulatory criteria for exceptional ability, and therefore the issue of the national interest waiver is moot.

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.