



B5

U.S. Department of Justice
Immigration and Naturalization Service

Identification data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



File: WAC 98 058 52871 Office: California Service Center Date: 12 MAR 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

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California 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 an alien of exceptional ability in the arts. The petitioner seeks employment as an artist/art 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 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 California Service Center on December 23, 1997. 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: "No representations have been made that the [petitioner] has exceptional ability; therefore, consideration of this petition will be limited to the issue of whether the beneficiary is a member of a profession holding an advanced degree." On appeal, counsel disputes this statement and notes correctly that the supporting documentation accompanying the initial petition clearly requested classification of the petitioner as an alien of exceptional ability in the arts. The director had stated that the petitioner satisfied the requirement for classification as an advanced-degree professional based on her Master of Fine Arts degree from the Savannah College of Art and Design. The record does not support this conclusion.

Section 101(a)(32) of the Act provides:

The term "profession" shall include but not be limited to architects, engineers, lawyers,

physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.

The regulation at 8 C.F.R. 204.5(k)(2) states, in pertinent part:

Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as an occupation for which a United States Baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.

The Service regulation at 8 CFR 204.5(k)(3)(i) states:

To show that the alien is a professional holding an advanced degree, the petition must be accompanied by:

(A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or

(B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

That the petitioner holds a master's degree has absolutely no bearing on whether being an artist requires at least a bachelor's degree. While the petitioner's degree may relate to her work, there is no evidence that there is any mechanism in place which would prevent an individual with no such degree from becoming an artist. One does not automatically become an advanced-degree professional simply by obtaining an advanced degree in a field relevant to one's occupation. Therefore, as an artist, the petitioner does not qualify as an advanced-degree professional.

Furthermore, while teachers in elementary or secondary schools, colleges, academies, or seminaries may qualify as professionals, the record remains unclear as to what occupation the petitioner is actually seeking. The wealth of the evidence submitted relates more to the petitioner's work as an artist than to her teaching. The petitioner has taught Saturday classes in the Community Service Program at Los Angeles City College in "Chinese Painting" and "Computer Art on the Macintosh." It has not been established, however, that teaching these classes requires at least a bachelor's degree. Additionally, the petitioner has served as a "teaching assistant" while attending graduate school at the Savannah College of Art and Design. The petitioner has also volunteered her services as an art teacher at a Georgia elementary school. However, the petitioner holds no teaching degrees, licenses or certifications and has not shown that her future activities will primarily involve employment as an art teacher. It should be noted that at the time of filing, the petitioner was enrolled as a student in a computer graphics program offered by UCLA. The petitioner has not sufficiently clarified that she is actively seeking a position as a teaching professional.

Thus, the record contains no persuasive argument or evidence that the petitioner is a member of the professions, as the pertinent regulations define that term. Further, as noted by counsel on appeal, the petitioner claims eligibility not as an advanced-degree professional, but as an alien of exceptional ability. We therefore withdraw the director's finding that the petitioner qualifies for classification as an advanced-degree professional.

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 petitioner holds a Master of Fine Arts degree in painting from the Savannah College of Art and Design, thus satisfying this criterion.

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.

The petitioner has offered no letters from current or former employers indicating that she has at least ten years of full-time experience as an artist or art teacher. Testimonial letters describing the petitioner's volunteer work and efforts as a teaching assistant are insufficient to satisfy this criterion.

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

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 three 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 the display of her work in Savannah's courthouse, selection of her work for a 1998 exhibition at the Coos Art Museum in Oregon, the display of her work at the [REDACTED] juried art show in 1997, the acceptance of her work into the National Graduate Drawing Exhibit in 1995, three awards she won while in elementary school, five awards she won while attending junior high school, color photographs of her paintings, and testimonial letters from various acquaintances.

The simple display of one's artwork is insufficient to demonstrate "achievements and significant contributions" to the field of art. While the petitioner has submitted paintings and drawings for public display and art exhibitions, such submissions are common among artists and do not necessarily set the petitioner apart from other painters/drawers. On appeal, the petitioner has submitted a letter dated January 17, 1998, reflecting acceptance of her painting for display at the [REDACTED] from March 13, 1998, through April 25, 1998. The petitioner's painting was accepted for display subsequent to the filing of the petition. A petitioner must establish eligibility at the time of filing. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971).

The petitioner submits evidence showing that her work has appeared on display in [REDACTED] courthouse and at the [REDACTED] juried art show in 1997. Although counsel states that the petitioner "has won several tough competitions and awards for her artwork," the only "awards" contained in the record date back to local writing contests the petitioner entered while attending elementary and junior high school. These awards will be addressed below. It should be noted that the mere acceptance of one's work for exhibition or display does not constitute an "award." The record contains no evidence of prizes awarded to the petitioner to elevate her work above the submissions of other participating artists. For example, the [REDACTED] juried art show pamphlet reflected the entry of about ninety other artists competing for about fifty available cash awards, but the petitioner's work does not appear to have been recognized in any of the award categories. Nor does the record contain any evidence from museums or gallery owners to distinguish the petitioner's work as superior. Further, there is no evidence to suggest that the petitioner's works command higher prices than those of other artists. The letter evincing acceptance of the petitioner's work into the National Graduate Drawing exhibit states that of the forty artists submitting entries, "thirty-five were accepted."

The petitioner has also presented honors and awards that she received as a student in elementary and junior high school. In these contests, the petitioner competed against other students under the age of fifteen thus excluding other more experienced and practiced individuals in the artistic field from consideration. Further, these local awards relate to the petitioner's student participation in poetry and written composition contests, not achievements in the teaching or visual arts fields, and cannot satisfy this criterion.

The petitioner has also submitted letters from "a long-time family friend," three of her former professors at the [REDACTED] two acquaintances from the [REDACTED] where the petitioner served as a data entry volunteer, and a fellow student with whom she studied at University of Georgia.

We do not dispute the credibility of the petitioner's witnesses or her valued participation in various volunteer projects. 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. We note that the record reflects little formal recognition or awards for the petitioner's work as an artist or teacher, arising from various groups taking the initiative to recognize the petitioner's contributions, as opposed to private letters submitted from selected witnesses expressly for the purpose of supporting the visa petition. We will discuss the witness letters further when we address the national interest issue, below.

On appeal, counsel indicates that the testimonial letters constitute other comparable evidence to show exceptional ability. These letters, however, have already been addressed under the previous criterion. Furthermore, in order to offer other comparable evidence, the petitioner must demonstrate that each of the above regulatory criteria would not readily apply to the occupation. In fact, counsel has offered arguments that three of the above regulatory criteria are applicable to the petitioner's occupation.

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 petitioner as a competent and dedicated artist/teacher, but the record does not establish that the petitioner 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 discussed 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, according to the petitioner's resume, she was enrolled in a certificate program for computer graphics offered by [REDACTED]. The petitioner had previously lectured Saturday classes in "Chinese Painting" and "Computer Art on the Macintosh" for the [REDACTED]. Counsel claims that the petitioner will serve the national interest through benefiting the educational and cultural interests of the United States.

[REDACTED] Chair of the Painting Department at the [REDACTED] describes the petitioner as "an exceptional artist and teacher with much to offer to students in the art world." She adds:

[The petitioner's] artwork combines beautifully Western and Eastern thoughts on spirituality and nature. Most of her work uses emotive color to draw the viewer in. Once in the picture, the viewer is placed in a scene of tranquil beauty provoked by hot trees and cool shadowy winds."

[REDACTED] Professor of [REDACTED] at the [REDACTED]

[The petitioner] and I worked together closely for the duration of her study toward the Master of Fine Arts degree, which she received from the [REDACTED] in May of 1996. During this time, I had the privilege of having [the petitioner's] assistance in teaching one of my courses (officially, as Graduate Teaching Assistant), and so can comment from somewhat of an employment point of view as well

as personal and artistic vantages.

An artist's training is one of self-discipline. It requires both analytic and investigative abilities, as well as the ability to act in the face of doubt. [The petitioner] manifested these qualities throughout her studies, and they are the basis of my opinion that [the petitioner] is an artist of exceptional merit. [The petitioner] is confident in her work which consists of fairly large scale pastel paintings of a lyrical nature. Her written thesis component went far beyond the basic requirements. It was an extended study of related works of visual and literary arts, exploring and setting the context for her own interests and development. It was a thorough work of intelligence and insight.

[The petitioner] is ambitious. She mounted two solo exhibitions of new work during her studies: this is highly unusual. It is no small feat, as each exhibition required significant planning and preparation. In addition to creating the featured works of art, for each exhibition she made handmade frames, designed the announcement cards and their mailing, and prepared appropriate and original reception menu items. The completeness of her conception of her work and its presentation is certainly of benefit to the community of artists with the U.S., as well as to non-artists. Her thorough consideration opens her work to lay people as well as to fellow MFA recipients. The imagery is accessible, welcoming to interpretation, while concrete in its source meaning. In the era of artwork stereotyped as decadent and deranged, [the petitioner's] work is a breath of fresh air, to renew and invigorate.

As an individual, [the petitioner] prizes quality interpersonal communication. She seeks to understand and to be understood. Both of her parents are teachers and she has great respect for the process of learning and educating. She is very responsive and gentle by nature. These qualities will serve her well in her interaction with students of her own. She has a unique point of view in the arts, grounded in her knowledge of literature from previous studies. As my assistant, [the petitioner] was tremendously reliable, never missing a class. She was clearly aware of the importance of commitment. Her demonstration of pastel techniques was a significant contribution to the class. In the busy, crowded workspace, [the petitioner] took the initiative to give order to supplies and facilities. She has excellent attention to details. Not a showy person, she goes about doing a great job with grace and aplomb.

██████████ Professor, ██████████ states:

[The petitioner] came to this country to pursue advanced study in literature but soon found that she wanted to be a painter. The first time I saw her and her paintings was in a graduate painting review in 1995. My strong impressions were about her courage to start anew, her ambition to pursue a challenging approach of painting "the poetic," and a sense of inner strength that came in the form of modesty. [The petitioner] then studied with me in a special topic course, and I saw her incredible progress. She did not take the usual steps like other students: it seemed that she had already known a great deal of

art before she started to paint. It was truly the kind of talent in the most creative sense - it was the talent that enabled her to expand, to explore, and to learn with or without knowing. Another unusual quality was that [the petitioner] progressed without struggles, or perhaps she had the capacity to always resolve her struggles in such a self-sufficient way that they seemed nonexistent.

In 1996 [the petitioner] became the Teaching Assistant to my Color Theory class. The Color Theory course was very demanding to assist for its theoretical structure, heavy workload, and emphasis on perceptual sensitivity and technical exactness. [The petitioner] impressed me with her mental and visual stamina, her effortless absorption of the vast information given to her, and her ability of transferring the knowledge to the students. Then a few months later I had the opportunity to read [the petitioner's] thesis. It was absolutely outstanding! Her thesis demonstrated a superb command of diction and expression of the English language, and a resourceful and impeccable research method. It is evident that she is self-motivated to excel beyond the highest standard!

All in all, I give my highest recommendation to [the petitioner]. She possesses such extraordinary ability that I have tremendous faith that she shall be an excellent artist, researcher, and teacher. Combined with her outstanding competence, work ethics, and self-sufficiency, I assure you that she will be your best asset!

[REDACTED] of the [REDACTED] offer letters of support praising the petitioner's data entry skills. [REDACTED] a family friend of the petitioner and lecturer in the Department of Architecture at [REDACTED] in Korea, submits a letter praising the petitioner's artistic abilities. However, it is not clear how an individual possessing a background exclusively in architecture is qualified to discuss the petitioner's ability to serve the national interest of the United States as an artist/teacher. [REDACTED] states that [s]he has known the petitioner "personally and professionally" for the five years since they studied together at the University of Georgia. [REDACTED] describes the petitioner's activities since 1993 and comments on her unique abilities as an artist and a teacher. It cannot suffice, however, to simply state that the petitioner has useful skills or a unique background. The petitioner must establish that 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 evidence submitted does not support a finding that it would be in the national interest to waive the job offer requirement."

The petitioner has submitted letters from three of her professors at the [REDACTED] and Design and four other personal acquaintances. The letters from her professors describe the petitioner's artwork and praise her abilities more as a student than as an accomplished artist. Further, the letters essentially limit the petitioner's artistic impact to her own college. The petitioner has offered no persuasive evidence that her artwork has captured the attention of independent artists, art buyers, museum curators, or art professors outside of her educational

institution or the venues to which she took the initiative of submitting her own work.

On appeal, counsel argues that the petitioner's work has been judged and selected for several important exhibitions and public venues. While the petitioner's works have been displayed at the [REDACTED] the [REDACTED] the [REDACTED] in [REDACTED] and accepted by the [REDACTED] these venues alone are insufficient to demonstrate significant achievements in her field beyond those of other artists. It is typical among artists to seek out exhibitions to display their work. The relative prestige of the petitioner's artistic displays and exhibitions, in comparison with others in the field, is not inherently evident from a listing of these venues. Participation in such venues is common and does not necessarily set the petitioner apart from other painters/drawers. Most notably, the record contains no evidence of prizes awarded to the petitioner to elevate her artwork above the submissions of the other participating artists.

On appeal, counsel argues that the petitioner's activities as a teacher serve the national interest. However, in regards to the petitioner's teaching efforts, the letters essentially limit her impact to students at the [REDACTED] and a local Georgia elementary school. They fail to demonstrate sufficient evidence of the petitioner's achievements and significant contributions to the field of art education as a whole. The petitioner's impact on the national interest as an art teacher would be so attenuated at the national level as to be negligible. For example, 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. The record further reflects that the petitioner has taught Saturday classes in the [REDACTED]. Again the petitioner's impact is limited to her students and reflects a local contribution rather than a national contribution. We do not dispute that the petitioner's work has yielded positive results in the training of her students, but it has not attracted significant attention from other art educators in the field. The record does not establish the extent to which other educators and instructors in the artistic field 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 of instruction. Therefore, the petitioner has failed to demonstrate that her individual role, limited solely to her students, is national in scope.

It should also be emphasized that the overall importance of a given occupation is insufficient to demonstrate eligibility for the national interest waiver. While the Service acknowledges the importance of the arts and teaching professions, 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. While benefiting our nation's culture through artistic education is an important 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 educators and gifted artists 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 employment as a teacher or artist inherently serves the national interest, counsel for the petitioner essentially contends that the job offer requirement should never be enforced for these occupations, and thus this section of the statute would have no meaningful effect.

All of the witnesses provided by the petitioner are her personal acquaintances or former educators. These individuals say little apart from discussing the petitioner's artistic skills and describing her as an effective art teacher. The petitioner's skill as an artist and teacher, while appreciated in her local communities, does not appear to represent a national interest issue. Further, while many of the testimonial letters describe the future promise of the petitioner with phrases such as "will contribute" and "shall be an excellent artist," the evidence submitted is insufficient to demonstrate a past record of significant achievements and contributions to the field of art.

The petitioner, through her participation in various volunteer projects, has proven herself a valuable asset to her local community. 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 artist/art teacher 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.

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 art/teaching, 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.

ORDER: The appeal is dismissed.