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U.S. Department of Justice
Immigration and Naturalization Service

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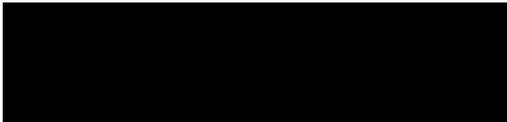
File: [Redacted] Office: Nebraska Service Center

Date: 2 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:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 which 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 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 and as a member of the professions holding an advanced degree. 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 an alien of exceptional ability or 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.

It appears from the record that the petitioner seeks classification as an alien of exceptional ability. This issue is moot, however, because the record establishes that the petitioner holds a Master's degree in nursing from the University of Washington School of Nursing. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The 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, 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.

We concur with the director that the petitioner works in an area of intrinsic merit, mental health. The director further concluded that the petitioner's work would have a national impact since research results are shared among learning institutions. The petitioner's current project, which is the basis of her national interest claim, focuses on the experiences of Chinese immigrants. Even if the petitioner focuses on mental health issues for Chinese immigrant children, the benefits of this project appear to be limited to a subset of the American mentally ill population, and even a subset of the Chinese-American mentally ill population.¹ Regardless, even if we concluded that the petitioner had established that the proposed benefits of her work would have an impact on all mentally ill children nationwide, she has not established that she 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

¹ While the mental health of all children including immigrants is in the national interest, it is not clear that the work of one researcher focusing on immigrants from one geographic region will have a national impact.

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. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. Matter of New York State Dept. of Transportation, supra, note 6.

the petitioner's advisor and the principal investigator listed on the grant funding the petitioner's project, writes that the University of Washington will offer the petitioner a Research Assistant Professor position upon completion of her Ph.D. asserts that while the petitioner was working on her Master's degree at that institution, she worked on a project evaluating a treatment program for mentally ill children and adolescents. She further asserts that the petitioner received training in the psychiatric wards of two Washington hospitals and "completed a rigorous program of study in psychosocial nursing with ethnic minority mentally ill youth and their families." continues:

Because of her unique expertise, [the petitioner] is now a Research Associate on a new, major, five-year research study I have been awarded that is entitled "Self-Management Therapy with Schizophrenic Youth" funded by the NIMH, NIH. . . . [The petitioner] is critical to the grant because she is the only person who is the expert on this highly specialized treatment program for schizophrenic youth. Her expertise is needed to carry out this study. She needs to be involved in this study for the full five years so that the treatment program is kept consistent throughout that time. If she left the study before it was completed, the treatment program we are studying would be disrupted due to the changes and the findings from the study would not be credible and, as a result, the money and effort invested in the study would be wasted. She is crucially needed to implement the treatment program for the full five years of the study.

continues that the petitioner has unique experience with ethnic minorities and mentally ill children. states that when the petitioner completes her Ph.D. she will be a co-investigator with. Finally, asserts that the petitioner is known nationally and internationally as an expert in treating severe mentally ill, ethnic minority children. An accompanying article in what appears to be an alumni or school newsletter indicates that co-principal investigator for future research in the area of mentally ill adolescents is.

a dean at the University of Washington School of Nursing, provides general praise of the petitioner and her involvement in several research projects, including some funded by the government. notes that the petitioner won the Award at her current institution and a scholarship in Thailand. further asserts that the petitioner's research with mentally ill immigrant children is "timely and significant for furthering our understanding of the mental health needs of this population." concludes that the petitioner's research experience, bilingual ability and cultural background "are

critically important in improving health care of the diverse population in the US, and the cultural competence of health care professionals practice and scholarship.”

an associate professor at the University of Washington School of Nursing, writes:

Over the past year, [the petitioner] has used this expertise in her work on my research team, contributing significantly to several of my research projects. In particular, [the petitioner] has used her specialized knowledge and skills to develop innovative tools for measurement of health care and educational outcomes, one of which will be presented at the 1998 annual scientific meeting of the American Association for Cancer Education. She has adapted a new approach to analysis of health care-related outcome data and is the only researcher in my lab who has the ability to use this innovative method in on-going and future studies conducted by personnel in my lab.

concludes that the petitioner is critical to the success of the lab and that it will take several years for anyone else to gain the experience acquired by the petitioner, requiring her to remain in the lab after graduation.

a professor at the University of Washington School of Nursing, provides general praise of the petitioner's abilities.

The director noted that the above letters reflect that the petitioner has tremendous respect among her immediate colleagues, but do not establish that the petitioner's work is known outside her immediate colleagues. On appeal, counsel argues that the petitioner's references are distinguished faculty at the University of Washington School of Nursing and are "disinterested" parties. While we acknowledge that the University of Washington School of Nursing has been rated as the top nursing school in the United States by *U.S. News and World Report*, it remains that the petitioner's references have all worked with the petitioner to some extent and most would like the petitioner to continue working on their projects. To imply that these references represent an independent evaluation of the petitioner's work is disingenuous. While letters from collaborators and colleagues are useful in detailing the petitioner's role in various projects, they cannot by themselves demonstrate that the petitioner has influenced her field beyond her immediate colleagues.

As of the date of filing, the petitioner had presented her work at several conferences. The published proceedings of those conferences include abstracts authored by the petitioner.² The

² The petitioner's poster presentation at the International Nursing Congress in Vancouver resulted in a satirical newspaper article suggesting (humorously) that the petitioner's research into Asian filial piety endangers capitalist "values." This article, purportedly written by a "good old boy" spying on the conference, in no way reflects recognition of the petitioner's work by the nursing community as a whole.

petitioner had also submitted two articles to journals, one of which was published in the *Journal of Cultural Diversity* after the date of filing. The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment." Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces the Service's position that publication of scholarly articles is not automatically evidence of influential contributions; we must consider the research community's reaction to those articles. The record contains no evidence that the petitioner's abstracts have been cited. As her articles were not yet published, they could not have influenced the field as a whole as of the date of filing.

The petitioner also submitted evidence of her membership in Sigma Theta Tau International, an honor society recognizing academic achievements and the [REDACTED] Award for her contribution to Theory-Development awarded by the University of Washington School of Nursing. In addition, the petitioner is listed as a "citizen of the world scholar" of the University of Washington due to her involvement with the faculty of [REDACTED] in [REDACTED] the development of their Ph.D. program. A letter from the dean of Chiang-Mai University indicates that the petitioner accompanied [REDACTED] to Thailand for this project. Counsel argues on appeal that these are all prestigious awards. While these honors represent recognition by the petitioner's university, they do not reflect that she has influenced her field as a whole. That the petitioner has been awarded a grant for a future project is not necessarily evidence that her past research has been particularly influential.

The petitioner submitted evidence that she received a grant from the [REDACTED] Foundation in Philadelphia to research the experiences of Chinese Immigrant Children. [REDACTED] founder of the foundation, asserts that the petitioner's project will "have relevance for the profession of child and adolescent psychiatric nursing and other professions such as education, social work, [and] psychology." The petitioner asserts that since no employer is sponsoring this project, the labor certification process is inappropriate. Researchers funded by foundations are still employed by a private laboratory or a learning institution. In the petitioner's case, [REDACTED] has indicated that the University of Washington will offer the petitioner a research position for at least the next five years. Thus, the petitioner's argument is not entirely persuasive. Regardless, even if the petitioner's project requires that she be self-employed, the inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that the self-employed alien will serve the national interest to a substantially greater degree than do others in the same field. *Id.* at note 5.

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.