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U.S. Department of Justice

Immigration and Naturalization Service

Identification data deleted to prevent clearly unremanded intrusion of personal privacy.

OFFICE OF ADMINISTRATIVE APPEALS
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File: [Redacted]

Office: Texas Service Center

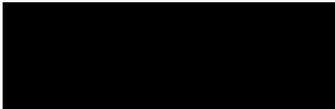
Date: MAR 22 2002

IN RE: Petitioner:
Beneficiary:



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

We note that, while the petitioner is represented by counsel, there is no evidence that counsel was involved in preparing or filing the appeal.

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. The petitioner seeks employment as a psychotherapist. 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 petitioner holds a Ph.D. degree in Counseling Psychology from McGill University. 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 sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor Service regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the

committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to Service regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 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.

Describes her various activities and professional goals:

I believe that I am the ideal professional to serve ethnic communities and minorities. I am also the best qualified mental health professional to train other professionals who need cultural sensitization in their work with non-mainstream groups because I am multicultural, and fluent in four languages (English, Spanish, French and Greek). . . .

The projects I am already involved in include an active private practice in counseling and psychotherapy, serving adolescents, adults, couples and families. I am also training and

supervising two interns in Counseling, one of which is working with delinquent adolescents and grieving families, and the other with foster families. I am planning to continue giving lectures, workshops and classes to the general public, as I have already been doing, on issues concerning mental health, and personal growth. Regarding the fellow professionals, I will continue giving workshops on psychotherapy and spirituality as it is applied with recovering populations (i.e. alcoholics and substance abusers). . . .

Regarding my involvement with the Hispanic population, I am in the process of networking with immigration lawyers, offering to them my services as a consultant for their cases who need assessment and evaluation and who are undergoing culture shock due to their recent immigration. I am also collaborating with a local hotline, the *Fathers' Hotline*, and developing an outreach educational project for single fathers. . . .

I also plan to continue my written contributions to the community, through the publication of articles in local papers, addressing a wide range of issues related to human growth.

The petitioner submits several letters. Officials of Sunbelt Organics, Inc., indicating that the petitioner has served as a business consultant "to re-engineer the infrastructure of our company." There is no indication that the petitioner's work for Sunbelt has any connection to her work as a psychotherapist and counselor.

William Hallman, the executive director of the Jung Society of Austin (Texas) states that the petitioner "has offered a number of successful classes and seminars" through the society. Laura Waldman, also identified as the executive director of the same society (apparently [redacted] predecessor), states that the petitioner "obtained excellent ratings by the attending students" after presenting workshops in early 1997.

[redacted], who shares office space with the petitioner, states "I have no doubt that the range of [the petitioner's] professional contributions will extend beyond the limits of the city of Austin." The record does not establish that the petitioner's work has, so far, had more than a local impact. A number of witnesses, including professional colleagues and clients, express their admiration and satisfaction. Many of these witnesses are located in the Austin area. Others are involved with social services organizations in Costa Rica; the petitioner had served as a visiting professor at the University of Costa Rica in 1994. The petitioner has also submitted favorable letters from witnesses in Quebec, where the petitioner had obtained her doctorate, and from her native Greece. Many of the letters from Canada are dated just after the petitioner received that degree, and appear to be recommendation letters prepared for prospective employers. Other Canadian and Greek letters, dated even earlier, date from the

petitioner's days as a student and recommend her for various student positions and scholarships. This evidence certainly does not call into question the petitioner's abilities as a counselor, but as a whole it says more about her training and goals than about her existing professional achievements. The petitioner has established solid professional credentials, but these credentials do not inherently call for a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought in this proceeding.

The petitioner submits copies of promotional materials for various workshops and classes that she has conducted and taught, many at the Jung Society in Austin. With regard to published material, the petitioner submits a manuscript copy of a letter which she claims she submitted to the editor of the Tico Times in 1994. The record offers no information about this publication, which appears to be an English-language newspaper published in Costa Rica. The petitioner also submits an untranslated copy of a Greek-language article which she had written, said to describe her impressions as a returning Greek expatriate. The petitioner also submits copies of her student writings.

The petitioner submits the articles of incorporation of the Parents and Children's Educational ("P.A.C.E.") Project, which designates the petitioner as a co-incorporator and the registered agent of the non-profit corporation. The document states "[t]he lawful purpose of the 'P.A.C.E. Project' is to provide support, education and resources to single, divorced, widowed and custodial fathers of all socio-economic and ethnic groups in the Central Texas area." The corporation was established in late November 1997, less than four months before the petition's mid-March 1998 filing. The record does not reflect what impact the P.A.C.E. Project has had. Given that its stated purpose is limited to clients in "the Central Texas area," we cannot conclude that the project has had, or is intended to have, a broader reach.

The director requested further evidence that the petitioner has met the guidelines published in Matter of New York State Dept. of Transportation. In response, the petitioner has submitted further evidence and an explanatory letter from counsel, intended to establish that the petitioner has met these guidelines.

We do not dispute the intrinsic merit of psychological counseling; the petitioner's occupation readily satisfies the first prong of the national interest test.

Counsel asserts that the petitioner's work is national in scope because the petitioner "counsels a number of other professionals whose work requires extensive national and international traveling, amongst them University professors, graduate students, and high-technology professionals." Counsel asserts that, as the petitioner enables these individuals to "become psychologically healthy, their professional contribution in the fields of education, technology

and economy improves on a national level." Counsel makes the related assertion that the petitioner's "contribution . . . reaches the U.S. population nationally, since her patients and students travel and relocate around the country, continuing contributions to their professional fields." This contribution is indirect at best. The petitioner makes no direct national contribution to the field of psychological counseling simply because some of her clients are well-traveled. Whatever contributions those individuals make in their respective fields are due primarily to their own talents and expertise. An individual who serves a limited number of clients or patients does not have a national impact simply by virtue of the mobility of those clients or patients.

Various clients and colleagues of the petitioner assert that the petitioner's work is national in scope, but they fail to explain how this is so. They assert that the petitioner provides needed assistance to individuals who require psychological counseling, and that as a result they emerge from treatment healthier and more productive than when they entered treatment. It is not clear why the same cannot be said of every competent therapist.

Counsel observes that the petitioner is, and intends to remain, self-employed and therefore labor certification is not an option. While this is one factor to take into consideration, there are many other factors as well. Congress quite clearly intended the job offer, including labor certification, to be the default process by which advanced-degree professionals secure permanent resident status. There is no indication in the statute or regulations that an alien can circumvent this requirement simply by declaring his or her intention to be self-employed.

Counsel makes several claims regarding the petitioner's abilities, stating for instance that the petitioner "has a proven ability to work with a range of problems of human behavior, significantly wider than the average U.S. psychotherapist" and that the petitioner "has created an audience significantly larger than any typical U.S. psychotherapist with the same minimum qualifications." Counsel often offers little or no documentary foundation for these claims. Counsel observes that the petitioner has appeared on a local radio program with an audience of up to 100,000 listeners. Counsel states that the audiences at the petitioner's "public speaking events . . . have grown from 40 to 300 people." The reference to "300 people" pertains to a public speaking engagement which was held in July 1999, after the filing of the petition and indeed after the director issued the request for further evidence. Other new submissions, such as brief newspaper pieces, also date well after the petition's March 1998 filing date. All of this evidence establishes that, at most, the petitioner has established a local reputation in the Austin area.

Counsel notes that, being multilingual, the petitioner is able to reach non-English-speaking clients whom most U.S. counselors are unable to treat. This may broaden the petitioner's potential

client base but it does not allow her direct influence or impact to extend beyond central Texas.

The director denied the petition, stating that the petitioner has satisfied only the "intrinsic merit" prong of the national interest test. The director stated that the letters submitted in support of the petition derive primarily from "satisfied customers" rather than independent witnesses.

On appeal, the petitioner contends that letters from satisfied clients represent relevant "empirical evidence" of her effectiveness as a therapist. The director has never contested that the petitioner is a competent and capable therapist, but competence does not elevate the petitioner above others in her field to an extent that would justify the special, added benefit of a national interest waiver.

The petitioner argues that her "interviews, newspaper articles and . . . multimedia innovative seminars . . . have reached impressively large audiences." Since her arrival in the United States, the petitioner's audience has been largely restricted to the Austin area. The petitioner has submitted no evidence to show that her work has influenced the larger field of psychotherapy or counseling outside of one part of Texas.

The petitioner states that she has documented a 15-year career in her field. Fifteen years before the appeal was filed, the petitioner received her bachelor's degree, and she was a graduate student for most of the following decade. The petitioner has documented that she was a successful graduate student, but there is no indication that her achievements as a graduate student have made any lasting impression on her field.

The petitioner notes that she is "currently writing a book." In Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. The initial petition contained no mention of this book, and even as late as the filing of the appeal, the book was not even fully written, let alone published. We cannot approve a March 1998 petition based on the petitioner's own expectations regarding a book which, fifteen months later, had not yet been finished.

The petitioner cites what she deems "previous case law" demonstrating that the labor certification process is not applicable to an independent practitioner such as herself. The decision thus cited is not a published precedent, and even then the alien's self-employment was not a major dispositive factor in the cited decision (as that decision itself plainly indicates). The petitioner in that proceeding was a petroleum engineer who had earned national recognition for "groundbreaking" innovations, and who had submitted testimony not only from her own clients and

collaborators, but from a variety of experts in her field and related fields, throughout the United States. This evidence showed that the alien in the cited proceeding had won recognition which, in turn, was not plainly contingent on the witnesses' personal acquaintance and professional involvement with her.

The petitioner has been building a reputation for herself, becoming a respected member of her local community. The petitioner has voiced noble goals, which, as she reaches them, may grow to national scale, but the mere hypothetical potential for future national impact cannot suffice to demonstrate the actual national scope of the petitioner's work. The petitioner has produced evidence from several different countries, but we cannot ignore that this evidence is always local to wherever the petitioner happened to be residing at the time. The petitioner's request for a waiver based on her work as of March 1998 appears to be premature.

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.