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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



File: [Redacted] Office: Nebraska Service Center Date: [Redacted]

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:

SELF-REPRESENTED

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks 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 sciences. The petitioner seeks employment as a physical therapist. 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 did not qualify for classification as an alien of exceptional ability, and 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 Service regulation at 8 C.F.R. 204.5(k)(2) states:

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.

Further, the regulation at 8 C.F.R. 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.

The petition was filed with the Nebraska Service Center on March 19, 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. Documentation submitted with the petition at the time of filing reflects that the petitioner initially sought classification as an alien of exceptional ability. The director found that the petitioner's evidence was insufficient to establish her receipt of a salary which demonstrates exceptional ability, her membership in professional associations requiring exceptional ability of their members, or achievements and significant contributions to the field as recognized by peers, governmental entities, or professional or business organizations. We concur with the director's findings regarding exceptional ability. We note, however, that in the decision denying the petition, the director limited consideration of the petitioner's classification to whether she qualified as an alien of exceptional ability.

On appeal, the petitioner indicates that she also qualifies as an advanced-degree professional. The record reflects that the petitioner possesses the foreign equivalent of a United States baccalaureate degree in physical therapy and has demonstrated over five years of progressive experience in the specialty. The petitioner's occupation falls within the pertinent regulatory definition of a profession. Therefore, pursuant to 8 C.F.R. 204.5(k)(2) and 8 C.F.R. 204.5(k)(3)(i), the petitioner can be considered to be a member of the professions with education and experience equivalent to an advanced degree. Because the petitioner qualifies as such, an additional finding of exceptional ability would be of no further benefit to the petitioner in this proceeding. 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.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this 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. Id. at note 6.

The petitioner describes her work and how it will serve the national interest:

I believe that I have over the years developed an integrated approach for identification of patient problems through skillful physical therapy evaluation. If my petition to immigrate to the USA is successful, I plan to continue my career as physical therapist in government hospitals, private clinics, and/or old peoples' homes. My therapeutic services will be based on the knowledge and experience, which I have acquired over the past fourteen years as an active physical therapist in diverse hospitals in three countries and continents. The work will be focused to meet the current stringent legislative mandate programs on early therapeutic interventions of handicaps.

My experience and creativity will no doubt be utilized to improve physical therapy programs in the USA. Such opportunities have arisen in the past in the USA, and will even be better nowadays given the current shortage of physical therapists in most areas of the USA. My proposed activities and job description will likely include some of the following:

Identify and conduct various clinical studies on post-operative and long-term therapy with pre-adolescents, using advanced technology and basic therapy for control and optimization of healing.

Initiate and formulate concepts that will radically improve on prosthetic acclimatization program that can be adapted for patients.

Provide physiotherapy for geriatric (elderly) and infant patients; in orthopedic, chest or neurological conditions; and work with mentally ill or handicapped children and/or adults.

Work outside the hospital, giving treatment or preventive education work, advising in factories, hospital, etc. on how to deal with carrying heavy weights, operator positioning, muscle relaxation methods, etc.

Preventive work in sport clubs to keep members fit, and to treat minor injuries.

Perform advisory services to organizations to see that office desks are right height for comfort, health and therefore efficiency; to show staff how to sit without strain; to teach sales assistance to relax while standing; to teach porters to carry without sprain, and so on.

Supervise and train physical therapy technicians.

The petitioner submits several witness letters in support of the petition. We discuss representative examples here. While many of the witnesses are professionals involved in medicine or healthcare in some way, the professional expertise of the majority of the petitioner's witnesses is outside of the petitioner's field of physical therapy.

Professor Oladapo Ashiru of the Department of Anatomy and Cell Biology at the University of Illinois at Chicago states that he has known the petitioner since the late 1980's. He describes the petitioner as "a leading expert in the treatment of sports injuries and rehabilitation." Professor Ashiru credits the petitioner with contributing to the development of "a novel approach for patient evaluation and therapeutic regimen." He also credits the petitioner with making a significant contribution in "the advancement of the principles of interrelationships of the anatomy and kinesiology of disability states." Professor Ashiru offers a general discussion of the petitioner's overall qualifications and experience, but provides minimal details regarding the petitioner's specific physical therapy innovations and their impact throughout the field.

Dr. [REDACTED] Clinical Pharmacist at Riyadh Armed Forces Hospital, states:

I have known [the petitioner] very well since she came to the Middle East to work in various hospitals which include Armed forces Hospitals and Medina National Hospital... I had the unique opportunity of effectively interacting with her in the treatment of a

number of cases like dealing with response of soft tissue to injury and therapeutic intervention.

* * *

She is well known for her various work in revolutionizing the evaluation and understanding of the function of the inter-vertebral disk and healing; as well as in the recognition of involving patients in the responsibility and management of their own spinal problems. Her most significant contributions in her field have been in the formulation of radically different methods for the treatment of stiff joints resulting from osteoarthritis and sports injuries. This treatment procedure has been well proven to be very effective with the restoration of the mobility to the affected joints.

Dr. Ahmed Abdel-Naby, a colleague of the petitioner at King Abdul Aziz Naval Base Hospital, describes the petitioner's "treatment of Bell's palsy with ice therapy" and her "application of a manual massage technique for treatment of a frozen shoulder." It has not been established how these treatments represent novel methods or significant achievements in the field of physical therapy.

Other witnesses who have worked with the petitioner such as Dr. Dipo Olabumyi, Consultant Orthopedic Surgeon at St. Elizabeth Hospital in Nigeria, and Olajide Bademosi, Professor and Consultant Neurologist at King Faisal University in Saudi Arabia, describe the petitioner's unique skills and experiences, but offer no specific evidence of her impact on the field of physical therapy. The testimonial letters submitted demonstrate that the petitioner's expertise and devotion make her a valuable asset to the hospitals where she is employed. The petitioner's skills and knowledge in providing physical therapy, while useful in the rehabilitation of her patients, does not appear to represent a national interest issue. In accordance with the statute, exceptional ability is not by itself sufficient cause for a national interest waiver. The benefit that the petitioner presents to the 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 must establish that she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. It cannot suffice to state that she possesses useful skills, or a "unique background." Regardless of the alien's particular experience or skills, even assuming they are unique, the benefit the alien's skills or background will provide to the United States must also considerably outweigh the inherent national interest in protecting U.S. workers through the labor certification process. The petitioner must clearly present a significant benefit to the field of endeavor.

Dr. [REDACTED] notes that the petitioner is "a prolific writer and has authored case studies and lecture notes on some of her treatment methods." He further states: "Many of these articles testify to her scholarship, and contribution to knowledge in her specialty." In support of the petition, the petitioner submits evidence of some lecture materials and articles that she alleges to have authored. However, the petitioner provides no evidence of the publication of these articles in

scholarly medical journals.

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." When judging the influence and impact that the petitioner's work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon the petitioner's findings. Frequent citation by independent researchers, on the other hand, demonstrates more widespread interest in, and reliance on, the petitioner's work. The petitioner has failed to provide any evidence of independent citation of her articles. The simple submission of non-published articles and lectures offers no valuation of their overall significance to the field of physical therapy.

The director requested further evidence that the petitioner has made a showing significantly above that necessary to prove the "prospective national benefit" required of all aliens seeking to qualify as "exceptional." In response, the petitioner submits a list of her research projects, documentation regarding the overall importance of physical therapy, information about the job outlook for physical therapists in the United States, and a report published in *Physical Therapy* reflecting the relative unavailability of physical therapists in the Southeastern United States.

Pursuant to Matter of New York State Dept. of Transportation, a shortage of qualified workers in a given field, regardless of the nature of the occupation, does not constitute grounds for a national interest waiver. Given that the labor certification process was designed to address the issue of worker shortages, a shortage of qualified workers is an argument for obtaining rather than waiving a labor certification.

Further, the overall importance of a given occupation is insufficient to demonstrate eligibility for the national interest waiver. While the Service recognizes the importance of physical therapists, 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 occupation is so important that any alien qualified to work in that occupation must also qualify for 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 her employment as physical therapist inherently serves the national interest, the petitioner essentially contends that the job offer requirement should never be enforced for this occupation, and thus this section of

the statute would have no meaningful effect.

The petitioner has not established that her research, to date, has consistently attracted significant attention outside of the hospitals and institutions where she has worked. The petitioner's witnesses consist entirely of her current and former colleagues, co-workers, collaborators and personal acquaintances. We note that the record reflects little formal recognition or awards for the petitioner's work in physical therapy, 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 that would have existed whether or not this petition was filed is more persuasive than subjective statements from individuals personally acquainted with the petitioner.

The director denied the petition, asserting that the petitioner's impact of providing physical therapy services in North Carolina would be "so attenuated at the national level as to be negligible." The director also found that the petitioner failed to establish that the national interest would be adversely affected if a labor certification were required. The director further noted that the evidence submitted failed to demonstrate that the petitioner's work was known and considered unique outside her circle of colleagues.

On appeal, the majority of the petitioner's arguments relate to the issue of exceptional ability. As noted previously, the petitioner qualifies as a member of the professions with education and experience equivalent to an advanced degree. Therefore, an additional finding of exceptional ability would be of no further benefit to the petitioner in this proceeding. The issue on appeal is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

In referring to the director's description of the witness letters, the petitioner argues: "None of these renowned experts are my fellow workers, [within my] immediate circle of colleagues, or my professors." The record does not support this conclusion. A review of the witness letters shows that all of these individuals are current or former professional acquaintances of the petitioner. The director's mere omission of "former" in describing some of the petitioner's colleagues and co-workers that offered letters of support is by no means such a flaw as to undermine the grounds for denial. The petitioner refers to the witnesses as "disinterested parties," but the record hardly supports this claim. Professor Ashiru states: "I have known the petitioner since the late 1980's." Dr. Thomas states: "I have known [the petitioner] very well since she came to work in various hospitals." [REDACTED] is the petitioner's current supervisor at King Abdul Aziz Naval Base Hospital. Dr. [REDACTED] states that he has "known and worked with the petitioner for over five years." Bela Lang "worked together very closely" with the petitioner when she served at King Abdulaziz Airbase Hospital in Dharan. Dr. [REDACTED] states that he has "known the petitioner for about twelve years." Dr. Ahmed Abdel-Naby, a colleague of the petitioner at King Abdul Aziz Naval Base Hospital, describes the petitioner as "very well known to him for several years." Dr. Thomas Klaye states that he and the petitioner have worked together at the King Abdul Aziz Naval Base Hospital for the past three years.

In a document accompanying the appeal, the petitioner indicates that some of the individuals mentioned above were her sources of patient referrals and thus constitute "disinterested parties." Regardless of their professional relationship with the petitioner, these witnesses merely establish the petitioner's localized impact on the patients receiving her treatment. We find that the statements from the petitioner's professional associates are insufficient to demonstrate her impact on the physical therapy field as a whole. We note the absence of expert witnesses specializing in physical therapy. In fact, the majority of the witnesses provided by the petitioner specialize in neurology, pediatrics, pharmacology, endocrinology, and orthopedics.

The witnesses describe the petitioner's skills as a physical therapist, but offer little evidence of her specific achievements and contributions having a potential to impact the United States. The witness letters essentially limit the petitioner's benefit to her patients and the physical therapists she supervises and trains. The petitioner's impact as a physical therapist would be so attenuated at the national level as to be negligible. The petitioner has failed to demonstrate how her work as a physical therapist, which appears limited to the patients and trainees at her hospitals, will benefit the national interest of the United States.

On appeal, the petitioner submits copies of the same witness letters previously provided, an article from *Physiotherapy and Practice* mentioning the profession's need for continual research, an article from *Careers 2000* reflecting increased demand for physical therapists in the United States, and informational literature from the North Carolina Board of Physical Therapy Examiners. Pursuant to published precedent, a labor shortage or the overall importance of physical therapy research is insufficient to establish eligibility for the national interest waiver.

A review of the documentation submitted reveals that the petitioner has established that she works in an area of intrinsic merit. However, she has failed to demonstrate that the proposed benefits of her work would be national in scope and that the national interest would be adversely affected if a labor certification were required.

The issue in this case is not whether improved methods of physical therapy are in the national interest, but, rather whether this particular petitioner, to a greater extent than U.S. workers having the same minimum qualifications, plays a significant role in her field. There is no indication that independent experts in field of physical therapy regard the petitioner's work to be of greater significance than that of other physical therapists. Rather, many key witnesses have couched their remarks not in terms of what the petitioner has done, but what she is likely to achieve at some unspecified future point. While the petitioner certainly need not establish national fame as a physical therapist, the claim that her work is especially significant would benefit greatly from evidence that it has attracted significant attention outside of individuals with direct ties to the petitioner.

In terms of the petitioner's prospective benefit to the United States, we note that she holds no

license to practice physical therapy in the United States. According to the Department of Labor's Occupational Outlook Handbook, 1998-1999 edition, all states require physical therapists to pass a state licensure exam after graduating from an accredited physical therapist education program before they can practice. Without such a license, the petitioner's ability to show that her future activities in the United States will involve employment as physical therapist is questionable. We note that in response to the director's request for evidence, the petitioner submitted a letter from the North Carolina Board of Physical Therapy Examiners dated April 21, 1998 outlining the state's licensure requirements for foreign-trained physical therapists. On appeal, the petitioner submits a second letter from the North Carolina Board of Physical Therapy Examiners, dated October 16, 1998, requesting that she submit a credential evaluation from an independent evaluation service. The notice also indicates that the petitioner must demonstrate a minimum of 120 semester hours, a passing level of 600 on the National Physical Therapist Examination, and proficiency in the English language. At the time of filing of the appeal, more than one year after the petitioner's receipt of the board's initial letter, we note the absence of evidence reflecting that the petitioner ever satisfied the North Carolina Board of Physical Therapy's requirements. The absence of such documentation raises the issue of whether the petitioner possesses the proper qualifications and intends to actively seek a position as a physical therapist in the United States.

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.