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Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536



28 MAY 2007

File: EAC 98 196 53036 Office: Vermont Service Center Date:

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 Law

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

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a teacher and researcher at the Pennsylvania State University (“Penn State”) where, at the time of filing, the petitioner was studying for her Ph.D. 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 a member of the professions holding an advanced degree, but that the petitioner has 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 director did not dispute that the petitioner 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.

The petitioner describes her work:

Although still in its early stages of development, my research seeks to focus on the impacts of various legislative tools that have been used by the government to enhance the idea of equal opportunity. The conceptual framework of my research is the affirmative action principle and Title IX, which is a legislative mandate concerning equality for women and minorit[ies] in education and the workplace. My study will investigate the implication of these legislative tools on the recruitment of minority and female faculty in two and four-year institutions of higher learning. . . .

This study will examine the effects of the increase in the participation of women in the workplace and in the academic labor market on the hiring and recruitment trends of faculty.

The petitioner’s wording suggests that the study has not yet begun in earnest, given that it is “still in its early stages of development.” The petitioner discusses what her study “will examine” rather than what she has already determined as a result of that study, and that “[i]t is hoped that the information from this study will be useful to persons engaged in career development of women.” A national interest waiver request predicated on research that has yet to take place requires persuasive evidence that the petitioner has a strong history of conducting highly useful

research. The petitioner's choice of research topic is not, in itself, a strong argument in favor of granting the waiver.

Along with documentation pertaining to her field of research, the petitioner submits several witness letters. Professor Edgar I. Farmer of Penn State states that the petitioner "has made substantial contributions to the educational profession in general and the Workforce Education & Development profession in particular," but he does not specify the contributions or explain their significance. Prof. Farmer also cites the petitioner's volunteer work and her student work with Penn State's financial aid office, neither of which pertain directly to her intended occupation.

Other Penn State faculty members praise the petitioner and her work, stating that the petitioner's research is "timely" and that it seeks to address unanswered questions regarding women's employment in academia. Some make general statements regarding the petitioner's aptitude as a researcher but none offer specific information on that subject.

It appears that the petitioner's research project is the basis for her doctoral thesis, in which case her work is already covered by her nonimmigrant student visa. An alien student with a valid nonimmigrant visa need not be a lawful permanent resident in order to complete a graduate thesis.

While the petitioner submitted a considerable quantity of background documentation with her petition, this documentation is general in nature and fails to establish that the petitioner has served or will serve the national interest to a greater extent than others in her field.

The director requested further evidence that the petitioner qualifies for a national interest waiver. In response, the petitioner has submitted copies of previously submitted documents, a new letter, and a copy of a published article. The new letter is from Professor Les E. Lanyon of Penn State's College of Agricultural Sciences. Prof. Lanyon states:

[The petitioner] contributed to a USDA-National Research Initiative project: "Sustaining Animal Agriculture and Environmental Quality in the U.S." . . . [The petitioner] provided the skill and commitment to work with data from various sources, to develop different statistical approaches for data analysis, and to use a variety of computer software applications to organize, analyze, and present information on trends in animal agriculture.

The published article submitted with this letter is a copy of the article, co-authored by Prof. Lanyon, that resulted from the research described above. The acknowledgements printed with the article state that the petitioner "provided technical assistance with data collection and map preparation." There is no indication that the petitioner participated in the actual research; instead, she provided "technical assistance" of the type that appears to be frequently provided by graduate students. Furthermore, this project has no demonstrable connection at all with the

petitioner's own intended field of research regarding women's employment opportunities in academia.¹

The director denied the petition, stating that the petitioner has not shown that her work will have an impact outside of Penn State, and that "minimal evidence of actual research by the [petitioner] has been submitted." The petitioner filed a motion to reconsider, in which counsel argues that the petitioner's "work in examining trends in female/male faculty ratios in four-year and community colleges throughout the United States will improve education and training programs for United States citizens." Counsel also states that the petitioner's work is national in scope because "her research will use . . . national data compiled by the National Center for Educational Statistics." We find that the petitioner's work "has national implications," in counsel's words, in that her study addresses national trends and her findings could hypothetically be implemented nationally or even influence national policy. This is not to say, however, that the petitioner has already documented such implementation or influence.

Counsel asserts that labor certification is not an option because she does not hold a permanent position at the university. This argument begs the question of why permanent immigration benefits are necessary at all. As we have already observed, the beneficiary's student work is covered by a student visa, and the petitioner has not demonstrated that her student project cannot continue without a change in her immigration status (let alone that such a change of status, even if necessary, would be in the national interest).

The director again denied the petition, stating that counsel's arguments on motion have not overcome the initial grounds for denial. On appeal, the petitioner submits a copy of counsel's arguments on motion, and counsel repeats the argument that the petitioner's "work has national implications and [would] not just benefit the Pennsylvania State University." We have concurred that the potential benefits arising from the petitioner's work are not limited to Penn State, but national scope is only one prong of the test set forth in Matter of New York State Dept. of Transportation.

The petitioner claims an extensive background in research, but has documented only that she provided technical assistance in preparing an article in a field that has nothing to do with her current work. The petitioner's prior degrees have no discernible bearing on her current research project, and therefore we cannot conclude that the petitioner has established a prior track record of significant research findings that would justify projections of future benefit. The petitioner has shown only that there exists a disparity in the female/male faculty ratio, and that she has planned a research project to study this problem with the hope of rectifying it. The petitioner's goals, while admirable, are not sufficient foundation for a national interest waiver, particularly in the absence of any evidence that the petitioner cannot satisfactorily pursue and complete this project under her current nonimmigrant status.

¹ We note that the petitioner's previous degrees are in Agriculture, Agricultural Economics, and Economics.

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.