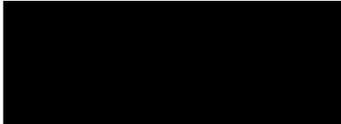


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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

**PUBLIC COPY**

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



File: WAC-02-026-55357 Office: California Service Center

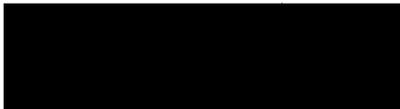
Date: APR 08 2003

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)

ON BEHALF OF PETITIONER:



**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

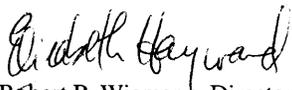
INSTRUCTIONS:

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 Bureau of Citizenship and Immigration Services (Bureau) 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 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 Administrative Appeals Office 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 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 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.

On appeal, counsel resubmits a brief that essentially reproduces her earlier briefs almost verbatim with few additions. She does not directly address the director's specific concerns. Inexplicably, the petitioner resubmits copies of almost all previously submitted documentation. We note that such documentation is already part of the record. The resubmission of documentation that is already part of the record cannot be considered evidence that might address the director's concerns. Nevertheless, we acknowledge that, among the recycled language, the appellate brief contains two new paragraphs that broadly touch on issues raised by the director. Therefore, we will adjudicate the appeal on its merits.

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.

(i) . . . the Attorney General may, when the Attorney General 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, at the time of filing, the petitioner held a Master's degree in Chinese Linguistics from the University of Hawaii at Manoa. 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 pertinent 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 the 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*, 22 I&N Dec. 215 (Comm. 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 intends to work as a Chinese language teacher, including by interactive television and through the preparation of web-based courses. The director concluded that the petitioner did not work in an area of intrinsic merit. We disagree. Education is clearly an area of intrinsic merit.

Next, the director concluded that the proposed benefits of the petitioner's work would not be national in scope. In her initial brief and her appellate brief, counsel provides the following explanation for how the petitioner's impact will be national in scope:

[The petitioner's] work directly affects improving education in the U.S. The U.S. has increased economical, political, and cultural ties with China, therefore, it is of substantial national interest that Americans speak and understand the language(s) of the international persons with whom we do business in the United States. According to Prof. Tao-Chung Yao, Coordinator of undergraduate Chinese courses with the department of East Asian Languages and Literature at the University of Hawaii, "there is an unprecedented need for Americans to acquire proficiency in the Chinese language."

This argument, however, goes more towards whether or not foreign language education has intrinsic merit, which we have already acknowledged. This argument does not explain how the petitioner's personal impact will be national in scope.

In response to the director's request for additional documentation, counsel argues that because the petitioner has skills "that allow her to share her knowledge via the World Wide Web, her work is national in scope." Counsel quotes another Chinese language professor in Hawaii who claims to have benefited from the petitioner's work. The petitioner also submitted letters from that professor and another professor at the University of Wisconsin, Milwaukee who claim to have used the petitioner's website.

The arguments regarding the petitioner's teaching ability do not establish that her impact would be national. As stated in *Matter of New York State Dept. of Transportation*, while education is in the national interest, the impact of a single schoolteacher in one school would be negligible nationally. *Id.* at 217, n. 3.

The remaining argument is that the petitioner's website will influence the teaching of Chinese nationwide and even worldwide. We approach this issue with caution. Anyone who designs a website can argue that its impact has the potential to be worldwide since the Internet is available worldwide. That said, while tenuous, we find that the potential benefits of the petitioner's website could be national in scope. The petitioner, however, need not reside in the United States to design or maintain a website. As the only contribution by the petitioner that has the potential to have a national impact could be performed from any country, we cannot conclude that the petitioner's website is a sufficient reason to waive the labor certification requirement in the national interest.

Finally, the director determined that the petitioner had not established that she would 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 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 219, n. 6.

Initially, the petitioner submitted evidence of recently joining the American Council on the Teaching of Foreign Languages and her membership in the Chinese Language Teachers Association and the North American Christian Foreign Language Association. Subsequently, the petitioner joined the Association for Asian Studies. The record does not contain evidence that any of these associations has any membership requirements other than paying the fee. Regardless, professional memberships are merely one of the requirements for exceptional ability, a classification that normally requires a labor certification. We cannot conclude that meeting one, or even all three of the requirements for that classification warrants a waiver of the labor certification requirement. The petitioner also submitted several student evaluations. The perceptions of the petitioner's students are not evidence of her influence on the field as a whole. Specifically, they do not demonstrate that other professionals in her field have been impacted by her work.

In addition to several letters merely confirming the petitioner's employment as well as a confidentiality agreement with World Point Interactive, Inc., the petitioner submitted several letters discussing her abilities. Li Chung Ming, a geophysics professor at the University of Hawaii, provides praise of the petitioner's Master thesis using statistical data to discuss the grammatical usage of certain Chinese words and her article entitled "Liven Up the Chinese Language Learning Classroom." Professor Ming asserts that this paper discusses ways to improve the efficiency of teaching with a widely used Chinese language textbook. Professor Ming further discusses the petitioner's work with Hawaiian Interactive Television (HITS), asserting that only Chinese and Hawaiian are offered on this program and that the petitioner is one of three Chinese teachers participating. Finally, Professor Ming provides praise of the petitioner's Chinese web site. While Professor Ming certainly has experience evaluating students, the fact that his field is unrelated to the petitioner's reduces the value of his evaluation of the petitioner's influence on that field.

Initially, the petitioner submitted several other letters from colleagues and a student at the University of Hawaii at Manoa who provide general praise of the petitioner's expertise with teaching and web-design. They do not provide any examples of how the petitioner has influenced her field as a whole other than to reference her website. That the petitioner's close colleagues are familiar with her website is not evidence of its national impact.

In response to the director's request for additional documentation, the petitioner submitted evidence that she was to begin working as a Chinese lecturer at Indiana University in August 2002 and a copy of a lecture delivered at that university. The petitioner also submitted e-mail correspondence with other universities regarding potential employment there. That the petitioner is able to secure employment in her field is not evidence of her influence over that field.

The petitioner also submitted an additional letter from a faculty member at the University of Hawaii at Manoa, a letter from a professor at Iolani School in Hawaii, and a letter from a professor at the

University of Wisconsin, Milwaukee. The authors all provide general praise of the petitioner's interactive television course and her website.

The director quoted the following language from *Matter of New York State Dept. of Transportation*:

Any objective qualifications which are necessary for the performance of the occupation can be articulated in an application for alien labor certification; the fact that the alien is qualified for the job does not warrant a waiver of the job offer/labor certification requirement. It cannot suffice to state that the alien possesses useful skills, or a "unique background." . . . [R]egardless 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.

By implication, the director concluded that the petitioner's teaching experience and web-design skills could be articulated on an application for labor certification. Counsel's 24-page appellate brief includes the following two paragraphs not included in previous briefs:

In response to the above issues raised by the Service in [its] Request for Evidence in this matter, [the petitioner] provided additional evidence that was clear and convincing with respect to her qualifications as an *ideal* candidate for a waiver of the labor certification requirement based on the above criteria. Additional expert testimony was also submitted, which unequivocally reflected that she has such unique skills and such an exceptional ability, that it would be contrary to the national interests of the United States to require a labor certification.

\* \* \*

As a whole, the evidence submitted on behalf of [the petitioner] is clear and convincing as to her qualification for a National Interest Waiver. She is among only a select few with the ability to utilize high technology to reach educators and students throughout the world. Many already use her website and the word of such is spreading throughout the Chinese language acquisition community. [The petitioner] has clearly distinguished herself as someone with rare skills that can contribute significantly to her area of work. She is leading the way to the future of language acquisition.

This language does not overcome or even directly address the director's concerns that the petitioner's teaching experience and web-design skills could be listed on an application for labor certification. Beyond the language quoted by the director, *Matter of New York State Dept. of Transportation* further provides that the issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Id.* at 221. Moreover,

as stated above regarding whether the petitioner's impact would be national in scope, there is nothing about the petitioner's website that requires that it be maintained by an individual residing in the United States. This fact, however, is not the sole basis of our decision. The record fails to establish that the petitioner's website has had a national impact on the field of foreign language education. Furthermore, the record does not support counsel's claims that the petitioner's work is impacting language acquisition as a whole. Regarding the petitioner's interactive television teaching, the record contains no evidence that this program, and the petitioner's contribution to it, have been recognized nationwide.

Finally, the petitioner made presentations at the Second and Fifth Annual Conferences for Graduate Students in the College of Languages, Linguistics and Literature at the University of Hawaii. It is not clear that a conference aimed at graduate students at a single college can have a national impact. While the University of Hawaii published the proceedings, the record contains no evidence that the petitioner's presentations have been cited. The petitioner also submitted a paper entitled, "The Disposal Usage of Yi in Shi Shuo Xin Yu." The record contains no evidence that this paper was published and cited or is otherwise influential. Similarly, the petitioner submitted her dissertation proposal with no evidence of its publication or influence. It is expected of Ph.D. candidates that they perform original research and in most cases such research is presented in some form. The petitioner did submit a paper presented at the First International Conference on Internet Chinese Education in Taipei, Taiwan, referencing the petitioner's website, which categorizes other available Chinese websites. The author of this article, however, is Dr. Jung Ying Lu-Chen, a Chinese language instructor at the University of Hawaii at Manoa, where the petitioner was a Ph.D. candidate. As such, the paper is merely evidence of additional recognition from the petitioner's immediate circle of colleagues.

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, 8 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.