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

identifying data deleted to prevent clearly unwarranted in

File: [redacted] Office: Nebraska Service Center Date: FEB 27 2003

IN RE: Petitioner: [redacted]
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:

[redacted]

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.

Elizabeth Hayward

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 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. The petitioner seeks employment as a social worker. At the time of filing the petition, the petitioner was working as an Employment Case Manager at the YWCA South King County Youth and Family Center in Renton, Washington. 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 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.
> >
> > > (i) Subject to clause (ii), the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.
> > >
> > > (ii) Physicians working in shortage areas or veterans facilities.

In a letter accompanying the petition, counsel asserts that the petitioner qualifies for a national interest waiver as an alien of exceptional ability in the sciences. The first issue to be determined, then, is whether the petitioner satisfies the statutory and regulatory requirements for an alien of exceptional ability. The director's decision does not contain any discussion of the issue; there is merely the conclusion that the petitioner's position requires an advanced degree or exceptional ability, and that the petitioner qualifies for the classification sought. The record, however, does not support this conclusion. The Service regulation at 8 C.F.R. 204.5(k)(3)(ii) sets forth six criteria, at least three of which an alien must satisfy in order to qualify as an alien of exceptional ability in the sciences, the arts, or business. These criteria follow below.

The Service regulation at 8 C.F.R. 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered." Therefore, evidence submitted to establish exceptional ability must somehow place the alien above others in the field in order to fulfill the criteria below; qualifications possessed by every member of a given field cannot demonstrate "a degree of expertise significantly above that ordinarily encountered." For example, every physician has a college degree and a license or certification; but it defies logic to claim that every physician is "exceptional."

> *An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability.*

The petitioner received a "Certificate in Social Work" for her completion of a two-year program of study at the Maseno Government Training Institute in Kenya. According to the Form ETA-750B and the petitioner's resume, the petitioner was pursuing an associate's degree in psychology and "majoring in social work" at the Green River Community College in Auburn, Washington at the time she filed the petition.

On appeal, counsel submitted information about the social worker occupation from the Department of Labor's Occupational Outlook Handbook, 1998 edition. The information provided states: "A bachelor's degree is the minimum requirement for many entry-level [social worker] jobs; however, a master's degree in social work is generally required for advancement." If a bachelor's degree is a near-universal requirement, then the fact that the petitioner holds no such degree does not indicate a degree of expertise above that ordinarily encountered in the field of social work. A bachelor's degree is generally found to require four years of education. See, e.g. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977).

Counsel asserts that the petitioner's two-year certificate from the Maseno Government Training Institute in Kenya is "from an institution of learning relating to her area of exceptional ability," and therefore the petitioner satisfies this criterion. We cannot ignore, however, the information contained in the Department of Labor's Occupational Outlook Handbook. If the petitioner does not even meet the minimum educational requirements for entry into the occupation, it defies logic to claim that her two-year academic record from the Maseno Government Training Institute (consisting of only twenty-four subjects) satisfies this criterion. The petitioner must demonstrate that her academic record is "significantly above that ordinarily encountered" among social workers. Given that master's degree in social work is generally required for advancement as a social worker, the petitioner's academic record in this case must reflect a degree, diploma, certificate, or similar award (relating to courses in social work from a college, university, school, or other institution of learning) exceeding that of a master's degree. Holding a Ph.D. or foreign equivalent degree in Psychology or Sociology, for example, might reflect a level of education significantly above that ordinarily encountered in the petitioner's profession.

The petitioner also submitted eight certificates showing that she completed training programs hosted by various associations and educational institutions. The record shows that these training

programs consisted of workshops and seminars that, for the most part, never lasted more than five days. The two exceptions were a two-week AIDS counseling workshop and a five-week Kenyan Basic Sign Language course. The petitioner's attendance at these short-term training programs does not, in any realistic sense, amount to even the minimum academic requirements necessary for employment as a social worker in the United States.

Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought.

In order to demonstrate eligibility under this criterion, the petitioner must submit letters from her employers showing that she has worked full-time as a social worker for a period of at least ten years as of the filing date of the petition on April 3, 2001.

The petitioner submitted a letter from Peninah Ogot, Administrator, Nairobi Hospice, stating that the petitioner served as a social worker for the hospice "for almost 6 years" starting in 1992. According to the petitioner's Form ETA-750B and resume, the petitioner worked at Nairobi Hospice from January 1992 to March 1997 (approximately five years and three months).

The petitioner also submitted a letter from Celia Forest, Program Director, Domestic Violence and Traditional Housing, YWCA of Seattle, verifying the petitioner's employment as a case manager from June 2000 to the petition's filing date (ten months). It is not certain that the petitioner's employment at the YWCA would qualify as full-time experience in the occupation being sought because the petitioner, according to the Department of Labor's Occupational Outlook Handbook, does not yet meet the minimum academic requirements for employment as a social worker by U.S. standards.

Assuming we were to accept the petitioner's employment at the YWCA, the petitioner has provided employment letters showing only six years of full-time job experience in the occupation sought. In a letter accompanying the petition, counsel asserted that the petitioner "worked in Kenya as a social worker for seven years." According to the petitioner's Form ETA-750B and resume, the petitioner has also worked as a medical social worker at National Hospital in Nairobi, Kenya from April 1990 to January 1992. The petitioner, however, has not provided a letter from the hospital to verify her experience. Even if such evidence were provided, the petitioner's experience would still fall well short of ten years.

A license to practice the profession or certification for a particular profession or occupation.

Counsel asserts that the petitioner's two-year certificate from the Maseno Government Training Institute in Kenya, submitted under a previous criterion, also satisfies this criterion. In order to satisfy this criterion, however, the petitioner must show that the license or certification was awarded for "expertise significantly above that ordinarily encountered" in the petitioner's occupation. Therefore, simply completing the general coursework required for entry into an

occupation would not suffice to satisfy this criterion.

Counsel states: "The petitioner received her certification... in April 1990. She thereafter worked in Kenya as a social worker for seven years, without the requirement of further licensing or certification. She is therefore entitled to consideration of this factor in her favor..." Counsel's statement implies that because Kenya requires no additional licensures or certifications of its entry-level social workers, the petitioner would automatically satisfy this criterion. We find, however, that the nonexistence of such licensures and certifications demonstrates only that this criterion has not been met.

We cannot ignore information provided by counsel from the Department of Labor's Occupational Outlook Handbook, stating:

> Since 1993, all States and the District of Columbia have had licensing, certification, or registration laws regarding social work practice and the use of professional titles. Standards for licensing vary by State. In addition, voluntary certification is offered by the National Association of Social Workers (NASVV), which grants the title ACSW (Academy of Certified Social Worker) or ACBSW (Academy of Certified Baccalaureate Social Worker) to those who qualify. For clinical social workers, who are granted the title QCSW (Qualified Clinical Social Worker), professional credentials include listing in the NASW Register of Clinical Social Workers. Advanced credentials include the NASW Diplomate in Clinical Social Work, and School Social Work Specialist. An advanced credential is also offered by the Directory of American Board of Examiners in Clinical Social Work. Credentials are particularly important for those in private practice; some health insurance providers require them for reimbursement.

Counsel's information clearly shows that advanced credentials are available in the petitioner's field at both the national and state level in the United States (although local licensing standards may vary by state). The petitioner, however, provides no evidence of licensure or any certification in the United States. Her entry-level certificate from the Maseno Government Training Institute and work experience in Kenya do not set her significantly above what may ordinarily be encountered in the field.

> *Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability.*

The purpose of this criterion is to demonstrate that the petitioner's exceptional ability has earned her compensation that exceeds that of others in her field. Other social workers clearly form the baseline against which the petitioner's salary or remuneration must be measured.

Counsel asserts that the past funding received by the petitioner for education, training and professional travel would satisfy this criterion as comparable evidence under 8 C.F.R. 204.5(k)(3)(iii). We note, however, that the petitioner offers no comparative evidence pertaining to the funding received by other social workers.

The Service regulation at 8 C.F.R. 204.5(k)(3)(iii) allows for the submission of comparable evidence, but only if the regulatory criteria "do not readily apply to the alien's occupation." In this case, the petitioner has been working as a case manager for the YWCA since June 2000. Furthermore, counsel for the petitioner has specifically stated: "Congress and the Service have recently recognized a separate prevailing wage structure for nonprofit organizations." In this matter, therefore, it is not unreasonable to require the petitioner to submit evidence documenting her prior salary (or remuneration) and comparing it to that of other U.S. or Kenyan social workers. Where an alien is simply unable to meet a specific criterion, the wording of the regulation at 8 C.F.R. 204.5(k)(3)(iii) does not allow for the submission of comparable evidence.

Evidence of membership in professional associations.

Counsel states that the petitioner's invitation to present a scientific paper at the Pan African Psycho-Oncology Society's Third Biennial Congress in Harare, Zimbabwe satisfies this criterion. The plain wording of the regulation, however, requires "membership in professional associations." While the petitioner has submitted evidence showing that she presented her findings at this conference (as one of more than one hundred presenters), the petitioner has offered no evidence that she ever held individual membership within the society or that she regularly participated in its activities.

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

Counsel states: "[The petitioner] received an achievement award in the area of Loss and Grief which included financial support for travel to London and Zimbabwe to present papers at conferences." The petitioner, however, provides no contemporaneous first-hand evidence of her receipt of the achievement award.

The petitioner submitted a letter from Peninah Ogot, Administrator, Nairobi Hospice, stating: "[The petitioner] traveled to Zimbabwe and the United Kingdom for fully sponsored training. She was later invited to both countries to present papers at the conferences fully paid for by the British Council as part of her achievement award in the area of Loss and Grief." Counsel asserts that the travel award "constitutes a major national award with accompanying international recognition in two countries." The assertions of counsel, however, do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Other than counsel's assertion and two vague sentences from a single witness, the petitioner has offered no further documentation regarding her Loss and Grief award. The absence of documentary evidence from the awarding entity is a crucial omission from the record. The petitioner has failed to submit evidence establishing the degree of recognition accorded to the award or the awarding entity. Training-based travel grants offer no meaningful comparison between the petitioner and other more experienced professionals in the field of social work who have long since completed

their occupational training. The petitioner's receipt of funding for travel expenses incurred while attending conferences in London and Zimbabwe hardly qualifies as "recognition for achievements and significant contributions" in social work. If, for example, the petitioner had provided evidence showing that she received formal recognition at either of these conferences for her achievements and contributions in social work, such evidence might be sufficient to satisfy this criterion.

Documentation contained in the record reflects that in 1995 the petitioner helped to organize a Loss and Grief Counseling Workshop, hosted and taught by [redacted] and Barbara Monroe of St. Christopher's Hospice in London, who identify themselves as "professionals in the field of Palliative Care and Bereavement." An internal report to the British Council, prepared by [redacted] contained details of the loss and grief training course that they offered in Kenya. The report acknowledges the vision of the Nairobi Hospice and offers special appreciation to the petitioner for her work on behalf of the Hospice in preparing a proposal to the British Council to bring the above-mentioned training consultants to Kenya.

Counsel asserts that [redacted] acknowledgement of the petitioner in their internal consulting report to the British Council reflects "special recognition" of the petitioner's work and therefore it satisfies this criterion. The evidence indicates that the petitioner prepared a funding proposal and organized a training workshop featuring educated professionals in the field of Palliative Care and Bereavement. The petitioner's efforts, however, do not rise to the level of achievements or significant contributions in the field of social work. The petitioner has not shown how her involvement in the project elevated her above other social workers or demonstrated her exceptional ability. The question necessarily arises as to why the petitioner's employer, Nairobi Hospice, would seek outside professional experts in order to provide loss and grief training. We note here that the petitioner herself attended the training, receiving a certificate for completing the five-day course.

The record contains no further evidence of recognition for the petitioner's work beyond the vague assertions of witnesses having direct ties to the petitioner. We note here that the record reflects little formal recognition or awards for the petitioner's work, 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 would be more persuasive than the subjective statements from individuals selected by the petitioner. It should be noted that the Service is not questioning the credibility of the petitioner's witnesses, but looking for evidence that the petitioner's work has impacted the field beyond those individuals with direct ties to the petitioner.

We will further discuss the witness letters when we address the national interest issue, below.

For the reasons explained above, the available evidence fails to satisfy any of the regulatory criteria regarding exceptional ability. While 8 C.F.R. 204.5(k)(3)(iii) allows for the submission

of comparable evidence, the petitioner has not shown that the six criteria do not readily apply to the petitioner's occupation, particularly in light of the information provided from the Department of Labor's Occupational Outlook Handbook. The petitioner's own apparent inability to meet the regulatory criteria does not show that social workers, in principle, cannot meet the criteria.

The plain wording of Section 203(b)(2) of the Act requires that visas be granted to "qualified immigrants... 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." The petitioner in this case seeks employment in the U.S. as a social worker; however, at the time of filing the petition, the petitioner was pursuing an associate's degree in her field. Given that the petitioner did not meet even the minimum educational requirements of her profession in the U.S. at the time of filing, it is reasonable to question her ability to substantially benefit the U.S. and also whether she constitutes a "qualified immigrant." Nothing in the legislative history suggests that the exceptional ability classification was conceived as a means to facilitate the educational training of foreign social workers, particularly when nonimmigrant visas are available to foreign students.

While the record portrays the petitioner as dedicated to her field, it does not establish that the petitioner exhibits a degree of expertise significantly above that normally encountered in her occupation. We withdraw the director's finding that the petitioner qualifies as a member of the professions holding an advanced degree and/or and alien of exceptional ability.

The issue of whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest is moot, because the petitioner is ineligible under the classification sought. Nevertheless, the issue will be discussed because it was central to the director's decision.

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, 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.

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 field is so important that any alien qualified to work in that field 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 sought. 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.

In a declaration accompanying the petition, the petitioner stated:

> I am seeking permanent residence in the United States to enable me to carry on indefinitely my social work on behalf of the terminally ill and their families, particularly among immigrant and refugee groups. Because the United States is not well advanced in addressing openly and directly the social impacts of death and dying, I believe that my knowledge and experience from doing this work in Africa would be of substantial benefit to the United States, particularly in providing a cross-cultural point of reference for those in American society, such as immigrants and refugees, who may not as easily benefit from the standard array of available social services. I would also like to resume my earlier work in research and writing in this field and, in order to be eligible for research grants, would need to be a permanent resident.

We reject the notion that a combination of career choice and national origin can be a valid ground for a national interest waiver. The petitioner's eligibility for a national interest waiver is contingent upon her demonstrating significant past accomplishments in the field of social work. The implication of the petitioner's declaration, which we do not accept, is that the petitioner qualifies for a national interest waiver simply by virtue of being a foreign-born social worker. While the Service recognizes the need for diversity in the professions, the issue in this case is whether the petitioner's past record of accomplishment is at a level that significantly distinguishes her from other social workers.

According to the Form ETA-750B, Statement of Qualifications of Alien, the petitioner began pursuing an associate's degree in psychology at Green River Community College in Auburn, Washington in January 1998. From April 1999 to June 2000, the petitioner served as an English tutor at Green River Community College.[1] In June 2000, the petitioner began working as an Employment Case Manager at the YWCA South King County Youth and Family Center in Renton, Washington. It should be note that the Form ETA-750 does not account for the petitioner's employment activities from March 1997 until April 1999.

Program Director, Domestic Violence and Traditional Housing, YWCA of Seattle, states:

> I am the Director of Domestic violence outreach program and the transitional housing program at the YWCA. As you are aware, YWCA is a non-profit organization that supports low-income families in America with housing, training and employment in order to be self-sufficient. I have over 15 years of experience in dealing with low-income families, and more so, those who are, or have been, victims of Domestic violence.
>
> I met [the petitioner] in May 2000 when she applied for a job with the YWCA. After going through her resume and consequently interviewing her, [the petitioner] demonstrated very unique skills and experience with loss and grief. As we may all know, loss and grief is not only through death., but also other losses like divorce, violence, and all other losses in our lives. I knew [the petitioner's] skills would be of such a great benefit to not only the YWCA, but also to any other organization that she would come into contact with. This is because loss and grief is an area that even highly qualified professionals tend to shy from. Fortunately, this young woman's extensive experience, knowledge, and interest in this field is remarkable. Her resume clearly demonstrates almost 10 years of continued growth in her career.

We note here that any objective qualifications necessary for the petitioner's employment as a social worker can be articulated in an application for alien labor certification. Pursuant to *Matter of New York State Dept. of Transportation*, an alien cannot demonstrate eligibility for the national interest waiver simply by establishing a certain level of training or education that could be articulated on an application for a labor certification. In order to establish eligibility under this classification, the petitioner must demonstrate a past history of significant accomplishment as a social worker having some degree of measurable influence on her overall field.

Celia Forest further states:

> From when she took the job in June, [the petitioner] proved herself. She not only has continued to help the clients, but also helped the other staff to understand the cycles of grief

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[1] The petitioner's resume offers conflicting information indicating that the petitioner served as an English tutor at the community college from "October 1999 to June 2000" (a difference of six months).

hence more knowledge in dealing with the clients who are usually coping with different losses in their live [sic]. Her concept has been adopted by many other case managers in their work.

After hardly six months, [the petitioner] earned herself a promotion as an Employment Case Manager. Why was she promoted? America as a nation is trying to move people from welfare to jobs. Most of this individuals end up in this situations because they are trying to cope with looses in heir lives [sic]. Therefore, [the petitioner] has been very instrumental in helping this individuals deal with looses hence raising their self-esteem and helping them get back on their feet [sic].

Research Investigator, Cross-Cultural Health Care Program of Seattle ("CCCHP"), Washington, recruited the petitioner to be her research assistant in 1998. Dr. Solomon states:

[The petitioner] was a great asset to the organization. Her duties included interviewing immigrants, especially from Africa, and trying to help them blend their culture to the new culture in dealing with life threatening illness without feeling ignored or pushed. During her nine months at the organization, we had already realized that [the petitioner's] unique qualities and experience in the field of loss and grief was of such great help not only to the clients who she came into contact with but to everybody since loss affects everyone.

however, does not elaborate on how the petitioner's impact has extended beyond her clients at the CCCHP. *Matter of New York State Dept. of Transportation* indicates that while education and pro bono legal services are in the national interest, the impact of an individual teacher or lawyer would be so attenuated at the national level as to be negligible. *Id.* at 217, note 3. We find such reasoning applicable to the petitioner's work with her clients from the CCCHP, YWCA, and the Nairobi Hospice as well. In this case, the petitioner's impact is generally limited to the clients that she directly counsels.

Administrator, Nairobi Hospice, worked with the petitioner at the hospice from 1994 to 1997. Peniah Ogot states:

As we all know that loss and grief affects everyone, [the petitioner's] special interest in this special field has had a lot of effect in the whole of Kenya. Though she is currently not in Kenya, her contribution cannot go unrecognized and a lot of people have benefited though her wisdom. For example, when she realized how much effect loss had on children, [the petitioner] took upon herself to educate and spread awareness on how to deal with loss especially in children.

With a lot of financial support both from local sponsors and the British Council, [the petitioner] was able to organize a hospice awareness week on television. After an over whelming response, [the petitioner] organized two one-week loss and grief training with professional support from Dr. Colin Parkes who is the back bone of loss and grief in UK. [The petitioner] also gave talks to schools on how to support the other children when they

> are faced with loss. Dealing with loss and grief became a very important area that [the petitioner] was approached by the schools to organize workshops for the teachers; [the petitioner's] work was of great national interest in the whole of Kenya.
>
> Throughout her period at the hospice, [the petitioner] grew from not just a social worker, but also a trainer and an expert in loss and grief. She demonstrated depth knowledge, special interest and passion for this special profession that not many people are able to deal with. Finally, looking at [the petitioner's] special interest in the field of loss and grief, and the fact that loss affects everyone, [the petitioner] can definitely work in any part of the world. She has excellent skills in diversity and therefore she can work among all groups.

We do not dispute that the petitioner has been active in the area of loss and grief, but general statements regarding the overall importance of this area of social work cannot suffice to establish eligibility for the national interest waiver under *Matter of New York Dept. of Transportation*. While the Service recognizes the undoubted importance of effective loss and grief counseling, eligibility for the national interest waiver must rest with the petitioner's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given field is so important that any alien trained in that field 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). Congress plainly intends the national interest waiver to be the exception rather than the rule.

[redacted] states that the petitioner's presentation of papers at conferences in Zimbabwe and the United Kingdom reflects the petitioner's international recognition. The record, however, does not contain citation records or other evidence to establish that independent academic scholars or experts in the field of social work (outside of the petitioner's professional contacts) regard the petitioner's conference papers as especially significant. It is difficult to conclude that the petitioner's work is important or influential if there is no evidence that others in the petitioner's field have relied upon the petitioner's findings. Few or no citations of the petitioner's work suggests that that work has gone largely unnoticed; it is therefore reasonable to question how widely her work is viewed as being influential in her field. It is also reasonable to question how much impact — and national benefit — the petitioner's work can have, if her presented findings do not influence others involved in the field of loss and grief counseling. While heavy independent citation of the petitioner's conference papers would carry considerable weight, the petitioner has not presented such citations here.

Dr. Colin Murray Parkes and Barbara Monroe of St. Christopher's Hospice in London identify themselves as "professionals in the field of Palliative Care and Bereavement." In a joint letter, they state:

> We have taken part in two teaching workshops on palliative care, loss and grief for health

> care professionals which were organized and led by the applicant in Nairobi. We were impressed by the high standard of organization which [the petitioner] brought to bear and by her abilities as a teacher in this challenging field.

Being an organized and effective loss and grief teacher does not equate to having a national impact in social work nor does it significantly distinguish the petitioner from other competent social workers. We note here that the five-day Loss and Grief Counseling Workshop represented basic training for "professionals in many different fields such as health, education and personnel," rather than advanced training for medical social workers. Dr. Parkes and Barbara Monroe's letter did not indicate that the petitioner's contributions were especially important to her field, nor did it devote more than two sentences to the petitioner's specific activities.

The director denied the petition, stating that the petitioner failed to establish that a waiver of the requirement of an approved labor certification would be in the national interest of the United States. The director stated that the benefits of the petitioner's work were regional, rather than national, in scope. The director further stated that the witness letters did not establish that the petitioner's work was "known and considered unique outside of her immediate circle of colleagues." The director concluded by stating: "While the record indicates that the petitioner has been a respected social worker, the record does not establish that her contributions are such that they measurably exceed those of her peers at this time."

On appeal, counsel argues that the director ignored "the numerous exhibits discussing the broad societal impact of terminal illness, especially those associated with deadly, contagious diseases of epidemic proportions such as AIDS, which form the heart of [the petitioner's] experience." These materials establish the intrinsic merit of the petitioner's field but do not demonstrate that the petitioner's individual accomplishments stand out in any way from the work of others in the same field or have the potential for national impact. General statements about the societal impact of terminal illness and the potential benefits of grief counseling do not single out the petitioner for the special benefit of a national interest waiver. By law, advance degree professionals and aliens of exceptional ability are generally required to have a job offer and a labor certification.

Counsel states that the director failed to consider the petitioner's workshops, papers, conference presentations, television programs, and other contributions in the field of social work. Most of this evidence has already been discussed at length. These documents are evidence of the petitioner's competence in the field of medical social work, but they do not elevate the petitioner above others in the field to such an extent that would justify the special benefit of a national interest waiver.

Counsel states that by requiring evidence that the petitioner's work was known and considered unique outside of her circle of colleagues, the director imposed an incorrect standard not required by *Matter of New York State Dept. of Transportation*. We find, however, that the director was simply noting that the petitioner had not provided evidence setting her apart from others in her field. *Matter of New York State Dept. of Transportation* states that "[a] petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at note 6. While we agree that one's immediate colleagues and professional acquaintances are best able to

provide detailed descriptions of the petitioner's medical social work, such individuals, by virtue of their proximity to the petitioner's work, are not in the best position to attest to the petitioner's impact beyond the institutions where she has worked. The petitioner's witnesses in this case became aware of the petitioner's efforts because of their close contact with the petitioner; their statements do not show, first-hand, that the petitioner's work is attracting attention on its own merits, as one would expect of especially significant advances in medical social work.

Counsel specifically refers to the papers authored by the petitioner and her conference presentations in Zimbabwe and London. Far more important than petitioner's selection to participate in these conferences, and her funding by the Kenyan Government, would be the impact of the petitioner's findings on the field. The record contains no evidence that the petitioner's findings were published in renowned medical, psychology or sociology journals, or more importantly, that her findings have been heavily cited by others in the field. Without evidence reflecting independent citation of her articles, we find that the petitioner has not significantly distinguished her efforts from those of others in her field. It can be expected that if the petitioner's findings were truly significant, they would be widely cited.

Counsel cites the Department of Labor's Occupational Outlook Handbook, arguing that the job outlook is significantly affected by social workers "who leave the occupation" thus creating "many job openings." However, 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.

Counsel states:

> Public sector and private nonprofit social service agencies simply do not have readily available administrative resources and the necessary institutional stamina to tender job offers to foreigners... and to work through the complexities of the labor certification process over a period of years. This explains why the job offer requirement should be waived.

The petitioner, however, offers no specific information from any public sector or private nonprofit social service agency to support this argument. General arguments pertaining to the length of time and complexities involved with the labor certification process do not single out the petitioner for the special benefit of a national interest waiver. We find nothing in the legislative history suggesting that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process. The petitioner must still demonstrate that she will serve the national interest to a substantially greater degree than do others in the same field.

Counsel asserts that the petitioner's work has "broad societal impact" and that the petitioner has made "broad contributions to the field of social work." However, nothing in the record shows that the petitioner has produced proven results that have been, or can be, implemented on a national

scale. Successful casework and the coordination of a five-day training course in loss and grief is a sign of professional competence rather than national impact. The importance of medical social work to the terminally ill and their families is undoubtedly clear, but this focus on the clients restricts the petitioner's work to those individuals she has directly counseled or trained. The record in this case does not establish the extent to which other social workers have relied upon the petitioner's methods as a model, or that the petitioner has implemented her own new methods of counseling which have been widely acknowledged throughout the field as a significant improvement over existing methods. Finally, no evidence has been submitted to establish the petitioner's specific impact on other social workers in different states.

Counsel repeatedly focuses on the petitioner's experiences in Kenya rather than on her accomplishments in the United States or how she will serve the national interest to a substantially greater degree than U.S. social workers. It is important to note that the petitioner does not meet the minimum educational requirements for entry into her profession in the United States.

In this matter, the available evidence does not persuasively demonstrate that the petitioner's past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. In any event, we cannot consider the petitioner for the national interest waiver if she has not shown that she qualifies for the underlying classification. The record indicates that the petitioner has earned the respect of her coworkers and other professional acquaintances. The record does not establish, however, that the petitioner's impact on the national interest exceeds that of other social workers. The petitioner's expertise as a medical social worker is clearly appreciated by her colleagues, but her qualifications and accomplishments do not rise to a level of exceptional ability or meet the higher burden of national interest.

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 occupation, 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.