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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[REDACTED]

JUL 03 2003

File: [REDACTED] EAC 00 236 51700 Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner:
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)

ON BEHALF OF PETITIONER:

[REDACTED]

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.

Robert P. Wiemann

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 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 a member of the professions holding an advanced degree. The petitioner seeks employment as an environmental consultant. 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 did not dispute that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but 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 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 application for the national interest waiver cannot be approved. The regulation at 8 C.F.R. § 204.5(k)(4)(ii) states, in pertinent part: "[t]o apply for the [national interest] exemption the petitioner must submit Form ETA-750B, Statement of Qualifications of Alien, in duplicate." The record does not contain this document, and therefore, by regulation, the petitioner cannot be considered for a waiver of the job offer requirement. The director's notice of denial, however, does not appear to have addressed this critical omission. We shall consider the merits of the petitioner's national interest claim below.

The petitioner obtained a master's degree in range science from the Colorado State University in December 1987. The evidence also indicates that the petitioner passed a final examination for a Ph.D. in July 1994 at the same university, but the record does not indicate whether this degree was awarded. 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

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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 United States worker having the same minimum qualifications.

In this case, the director found that the petitioner had established that she would be employed in an area of substantial intrinsic merit, and that the proposed benefit of the petitioner's employment, improved resource management, would be national in scope. However, the director did not find that this petitioner had established that she will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications. We concur with the director.

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 qualifications rather than with the position sought. This applies whether the position is publicly or privately funded. It is generally not accepted that a given project is of such importance that any alien qualified to work on it must also qualify for a national

interest waiver. The 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 219, n.6.

Documentation submitted with the petition includes a statement in support of the petition from the petitioner's counsel, the petitioner's educational credentials, employment letters documenting the petitioner's involvement with the United Nations Development Program (UNDP), and two witness letters. Dr. Peter Gilruth, a senior technical advisor with the UNDP Office to Combat Desertification (UNDP/UNSO), indicates that he has known the petitioner since 1999, as a colleague who has provided consultation services to the UNDP/UNSO and other various UN and academic entities. Dr. Gilruth states:

In this capacity, [the petitioner] has made enormous contributions to the conceptual design of the programme, resource mobilization and in facilitating field surveys within six African countries (Ethiopia, Kenya, Mali, Mozambique, Senegal and Zimbabwe). She was a key force in organizing an international workshop on the use of climate information held in Zimbabwe in October 1999.

* * *

The programme on use of climate forecasts is in the US national interest in that it reaffirms the US leading position on global issues pertaining to environmental protection.

* * *

In June 2000, [the petitioner] prepared a paper "Famine to Prosperity" which asserted the UNDP corporate position on good governance, democratization, sustainable development, policy and capacity building. The paper was an asset to an inter-agency task force formed to address food security in the Horn of Africa. The main issues pertinent to the inter-agency task force are of merit to the US government foreign policy on emergency responses and aid. She has also contributed to international fora including but not limited to drought planning seminars held in Culiacan, Mexico and Townsville, Australia in 2000 and 1999, respectively.

Dr. [REDACTED] observations enumerate some of the petitioner's past accomplishments but he does not explain their significance or describe how they set the petitioner apart from others in her field.

[REDACTED] a director and professor at the University of Nebraska's National Drought Mitigation Center, also praises the petitioner and her expertise:

I came to know [the petitioner] in 1999 while working on an international program with the U.N. Development Program on the best use of climate information by farmers with the goal of improving their drought coping capacity.

* * *

Presently, she is making a substantial contribution to an initiative of both national and global scale, involving the application of climate forecasts in agricultural decision-making. This effort is organized by UN agencies in partnership with the National Drought Mitigation Center at the University of Nebraska, as well as other U.S. institutions involved with seasonal climate forecasts and drought monitoring. This work is of national interest to the U.S. because it involves an international application of U.S. climate forecasting and drought monitoring products, as well as the expertise of the National Drought Mitigation Center in drought preparedness and mitigation.

* * *

[The petitioner's] work is also extremely valuable to the U.S. at the local and national level, given the need to advance natural resource management tools and technology to new frontiers in response to client needs. With expanding and shifting population comes an increased demand on our finite natural resources. Drought preparedness helps us improve our management of natural resources during periods of drought-induced water shortage and reduces conflicts between water users.

Professor [redacted] general observations provide more support for the requirements of the first two prongs of the test set forth in *Matter of New York State Dept. of Transportation, supra*, rather than addressing any of the petitioner's specific achievements. We note that both of the petitioner's witnesses are within her immediate circle of colleagues and collaborators. While such letters are important in providing details about the petitioner's role in various projects, they cannot by themselves establish that the petitioner has influenced her field as a whole.

The record also contains copies of letters confirming that the petitioner was invited to international workshops in Rome relating to sustainable agricultural development and in Culiacan, Mexico, involving designing drought parameters. A copy of a local Mexican newspaper article featuring the petitioner's photograph is also in the record. The article is not accompanied by a certified English translation as required by 8 C.F.R. § 103.2(b)(3), and as such, carries no evidentiary weight. Simply going on record without supporting documentary evidence is not sufficient to meet the petitioner's burden of proof. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The record also contains a copy of the petitioner's conference paper "From Famine to Prosperity," referred to by D [redacted] and a copy of the cover sheet of the petitioner's doctoral dissertation. There is no indication in the record that her doctoral dissertation has been published. There is also no evidence that attending environmental conferences or presenting papers at such conferences is unusual in the petitioner's field. When assessing the influence and impact that the petitioner's work has had, the

act of publication is not as reliable a gauge as is the citation history of the published works. Publication alone may establish originality, but it cannot be concluded that a published article is important or influential if there is little evidence that other researchers have relied upon the petitioner's findings. Similarly, frequent citation by independent researchers can be viewed as a more accurate indication that the petitioner's work has attracted widespread interest or authoritative recognition.

In this case, there is no evidence that other independent environmental researchers or experts have cited the petitioner's work. It is difficult to conclude that a published article or written presentation is important or influential if there is no evidence that other researchers have relied upon the petitioner's findings. There is no evidence in this case that the petitioner's work has had any significant influence outside the institutions with which she has been associated. *See Matter of Treasure Craft of California, supra.*

The petitioner's counsel asserts that the petitioner's international renown in the field of range management and drought relief is uniquely suited to the approval of a national interest waiver. Counsel contends that the petitioner's consultation work for organizations such as the United Nations makes her "an important potential addition to the U.S. economy for the foreign policy prestige such associations bring." We note that assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). The importance of expertise in environmental management is not contested, but the importance of an occupation, or the prominence of the institution that employs an alien, does not automatically establish the alien's individual credentials or mandate the approval a waiver in the national interest. *See Matter of New York State Dept. of Transportation, supra.* By law, advanced degree professionals and aliens of exceptional ability are generally required to have a job offer and a labor certification. Congress intended the labor certification process as the rule rather than the exception.

Similarly, in accordance with published precedent, exceptional ability is not by itself sufficient cause for a national interest waiver. The benefit that the petitioner brings to her field must greatly exceed the "achievements and significant contributions" contemplated in the regulation at 8 C.F.R. 204.5(k)(3)(ii)(F). It cannot suffice to state that the alien possesses useful or unique skills. Regardless of the alien's particular background or skills, even characterizing them as unique, the benefit her skills provide must also considerably outweigh the inherent national interest in protecting United States workers through the labor certification process. The petitioner must show that she has already significantly influenced her field of endeavor.

In denying the petition, the director stated that the record indicated that while the petitioner's contributions appear to have been noteworthy, there have been no specific significant accomplishments that would substantially serve the national interest of the United States.

On appeal, the petitioner's counsel asserts that the petitioner's position as a self-employed consultant does not lend itself to the labor certification process. As previously noted, the unavailability or inapplicability of a labor certification is not sufficient cause for a national interest waiver; the petitioner must still demonstrate that she will serve the national interest to a substantially greater degree than do others in the same field. *Matter of New York State Dept. of Transportation*, at 218, n. 5.

In this case, the record contains no direct, objective evidence that the petitioner's work has attracted significant attention or had any influence upon the work of others outside of the institutions or entities that have employed or collaborated with her. We note that the appeal was dated July 21, 2001 and that the petitioner's counsel indicated that a brief and/or evidence would be submitted to the AAO within 30 days. As of this date, more than twenty months later, no other documents have been received.

As is clear from the plain wording of the statute, it is 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 the national interest. Similarly, 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. Based on 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. In this case, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.