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

ADMINISTRATIVE APPEALS OFFICE  
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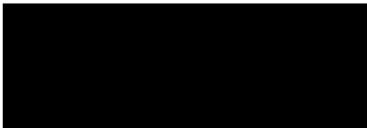
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File: EAC 99 123 51844 Office: Vermont Service Center

Date: **MAR 24 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)

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

**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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment based immigrant visa petition was denied by the Director, Vermont Service Center. The Administrative Appeals Office (“AAO”) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion will be granted, the previous decision of the AAO will be affirmed and the petition will be denied.

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 and as an alien of exceptional ability. The petitioner seeks employment as a School Psychologist. 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 motion, the petitioner alleges “discrepancies in the INS handling and review of her national interest waiver appeal.” The petitioner states “[t]he disparity in the receipt numbers provides evidence to the errors made in the processing of the appeal.” Such a disparity, if it were to exist, would be irrelevant to the AAO’s prior determination unless the petitioner were to show that the AAO had failed to consider the supporting documentation accompanying the appeal. Contrary to the petitioner’s statement on motion, the file number provided on the cover page of the AAO’s May 23, 2002 decision was entirely correct. The file number cited, EAC 99 123 51844, pertains to the receipt number from the petitioner’s Form I-140, Petition for Alien Worker, filed on March 1, 1999. For further clarification, we note that receipt number EAC 00 160 52230 pertains to the petitioner’s appeal and that receipt number EAC 02 225 50105 relates to the instant motion. All subsequent proceedings pertaining to a particular petition, such as an appeal or motion, cite the original petition’s receipt number. Regardless of the receipt number cited, the petitioner’s motion does not specify any relevant evidence offered on appeal that the AAO’s decision failed to address. Nor does the petitioner cite any specific AAO statement that constitutes error. We find that the prior AAO decision provided a detailed discussion of the petitioner’s evidence and note that something as inconsequential as the citation of a particular receipt number does not undermine any of the AAO’s specific findings regarding the petitioner’s eligibility for a national interest waiver.

The petitioner argues that “the analysis used in reaching the decision was inconsistent with the information provided.” The petitioner states:

Page 2 of the Dismissal letter states, “The petitioner seeks employment as a School Psychologist/Researcher.” This conclusion is inconsistent with the information provided. Neither of the two briefs nor the supporting documentation submitted for the appeal claim that I seek employment as a School Psychologist/Researcher.

We note, however, that under Part 6 of the petitioner’s Form I-140, Petition for Alien Worker, the petitioner listed “School Psychologist/Researcher” as the job title of her proposed employment. The petitioner signed the Form I-140 under penalty of perjury on December 31, 1998 and affirmed that the information provided was “true and correct.” Further, under Part 9 of a separate form, the ETA-

750B, Statement of Qualifications of Alien, the petitioner listed "School Psychologist/ Researcher" under the heading "Occupation in which Alien is Seeking Work." Therefore, we find that the AAO's analysis was clearly not "inconsistent with the information provided" as alleged by the petitioner. We further note the petitioner's statement on motion acknowledging that she "conducted research projects and disseminated the results." Based on that statement and the information provided in support of the petition, we find no error in the AAO giving due consideration to the petitioner's evidence related to her research activities in making its determination.

The petitioner argues that "the analysis used in reaching the decision was inconsistent with precedent decisions." The petitioner states:

The INS has granted the national interest waiver to two elementary school teachers, one elementary school teacher from Virginia Beach City Public Schools and another teacher from Hampton Roads. In doing so, the INS has established not one but two precedents of acknowledging the national impact of local public school professionals.

The AAO has not examined the record of proceeding in those cases and thus there can be no meaningful analysis of the decisions to determine the applicability of the same reasoning to the petitioner's case. Further, neither of these unpublished decisions to which the petitioner refers establish a binding precedent that mandates the approval of every petition for aliens who seek employment with a local public school system. See 8 C.F.R. § 103.3(c), which indicates that only designated precedent decisions are binding on Bureau officers. Therefore, the petitioner's attempt to apply findings from non-precedential Bureau decisions to the current case is flawed.

The petitioner cites no precedents in support of her motion to reconsider. However, *Matter of New York State Dept. of Transportation*, 22 I&N Dec. 215 (Comm. 1998), the published precedent decision under which this petition has been reviewed, 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 duties as school psychologist as well. In this case, the petitioner's impact would generally be limited to the students that she directly counsels.

The petitioner's motion includes two letters. The first letter, from an employee of a Virginia Beach mental health provider, compliments the petitioner for writing a thorough psychological report on a student at Seatack Elementary School. The other letter, from the principal of Newton Road Elementary School in Virginia Beach, notifies the petitioner of her selection "as this week's winner of the 'I Make A Difference' ribbon" awarded by the elementary school's faculty. While these letters indicate that the petitioner's skills are appreciated by individuals from the local community, they fall well short of demonstrating her national impact.

The petitioner argues that she "presented research findings at national conventions of the world's largest professional organization of school psychologists." The petitioner submits three copies of reprint requests for her presented research at the 1996 and 1997 National Association of School

Psychologists (“NASP”) conventions. Two of the reprint requests were addressed “Dear Colleague” and were submitted on form-style cards with the requested information hand-written into blank spaces. The fact that the petitioner presented her research at national conventions carries little weight. Of far greater importance in this proceeding is the importance to the field of the petitioner’s findings. When judging the influence and impact that the petitioner’s work has had, the very act of presentation or publication would not be as reliable a gauge as would the citation history of one’s published work. Publication or presentation of research may serve as evidence of its originality, but it is difficult to conclude that the research is important or influential if there is little evidence that other researchers or school psychologists have relied upon the petitioner’s findings. Frequent citation by other researchers, on the other hand, would demonstrate more widespread interest in, and reliance on, the petitioner’s work. In this case, the petitioner has failed to provide evidence showing that her research has attracted significant attention among independent researchers in her field.

In its prior decision, the AAO addressed the petitioner’s research activities and involvement in various organizations, stating:

The impact and implications of the petitioner’s research findings and conference presentations must be weighed. Simply submitting evidence of the petitioner’s activities as a school psychologist or noting that she “participated” in the development of position statements for NASP does not establish the importance of the petitioner’s contributions to her field relative to those of other qualified school psychologists/researchers. The record in this case generally describes the petitioner’s work rather than offering a valuation of its overall significance to the field of school psychology. Part 6 of the Form I-140 reflects that the petitioner seeks employment as a “School Psychologist/Researcher,” but the petitioner offers no evidence that her research has been published in reputable psychology journals. The authorship of two brief articles appearing in the Virginia Academy of School Psychologists’ *Bulletin* and a local Virginia newspaper do not reflect significant impact on the field as a whole. Further, the record does not establish the extent to which other school psychologists have relied upon the petitioner’s methods and research findings as a model, or that the petitioner has implemented her own new methods of counseling or psychological testing which represent a significant improvement upon existing methods. Finally, no evidence has been submitted to establish the petitioner’s specific impact upon other school psychologists in states other than those where the petitioner has studied or worked.

The petitioner states that her participation as a member of a national and international organizations, service as a local site coordinator for the Das-Naglieri Cognitive Assessment System, and the “invitation to join” an overseas delegation (the record contains no evidence that the petitioner actually accompanied the delegation) are evidence of her “national impact.” The petitioner’s mere participation in these endeavors, however, cannot suffice to demonstrate her eligibility under *Matter of New York State Dept. of Transportation*. At issue in this matter is whether the petitioner’s contributions in the field are of such unusual significance that she 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, note 6. The petitioner must submit evidence showing that her individual work is acknowledged as particularly significant not only by those individuals with direct ties to her but throughout the greater field. In this matter, the petitioner has not established that her work has a national impact, or that her past record of accomplishments significantly distinguishes her from others in her field.

The petitioner's motion includes documentary evidence reflecting a labor shortage of school psychologists. 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. See *Matter of New York State Dept. of Transportation, supra*. Similarly, arguments about the overall importance of a given occupation may establish the intrinsic merit of that occupation, but such general arguments cannot suffice to show that an individual worker in that field qualifies for a waiver of the job offer requirement.

The petitioner also submits communications from prospective employers reflecting the availability of job offers to the petitioner. The question necessarily arises as to why the petitioner seeks the special benefit of a national interest waiver when specific job offers clearly exist. By law, advance degree professionals and aliens of exceptional ability are generally required to have a job offer and a labor certification. With regard to Congressional intent, 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 (5<sup>th</sup> Cir. 1987). Congress plainly intends the national interest waiver to be the exception rather than the rule.

The petitioner's motion offers a discussion of other issues such as the length of time of the adjudication process, the petitioner's opinion of the Bureau's handling of status inquiries pertaining to her appeal, and the Bureau's failure to immediately update her change of address, but these issues have no bearing on the AAO's findings regarding her eligibility for a national interest waiver.

In sum, the available evidence does not persuasively establish that the petitioner's past record of achievement is at a level that would justify a waiver of the job offer requirement that, by law, normally attaches to the visa classification sought by the petitioner.

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 the 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.

**ORDER:** The AAO's decision of May 23, 2002 is affirmed. The petition is denied.