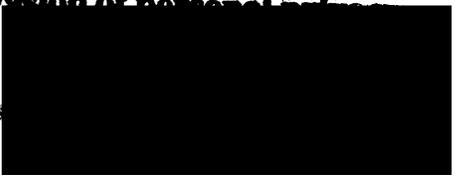


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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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prevent clearly unwarranted
invasion of personal privacy



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

File: [Redacted] Office: Texas Service Center

Date: **MAR 26 2003**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

PUBLIC COPY



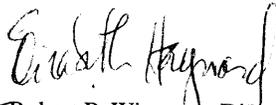
INSTRUCTIONS:

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 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, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary 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 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 beneficiary 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.

Oral argument is limited to cases in which cause is shown. A petitioner or his counsel must show that a case involves unique facts or issues of law that cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Therefore, the petitioner's request for oral argument is denied. Counsel's remaining arguments will be discussed below.

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.

The beneficiary holds a Master's degree in rehabilitative counseling from Fort Valley State University. The beneficiary's occupation falls within the pertinent regulatory definition of a profession. The beneficiary 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 main argument put forth by counsel, the petitioner, and most of the references is that the U.S. government has already determined that the beneficiary's presence would be in the national interest because the Rehabilitation Services Administration (RSA), under the U.S. Department of Education, awarded the beneficiary a scholarship which requires him to work for a government agency or an entity that contracts with such an agency for six years upon completion of his degree. Thus, the argument goes, the Bureau will undermine RSA's investment in the beneficiary if it denies the national interest waiver.

The director concluded that the Service (now the Bureau) "is not obligated to approve petitions based on an agreement between the beneficiary and a state agency." On appeal, counsel argues that the Department of Education is a "co-equal" of the Bureau and that we "threaten to waste the Federal Government's investment in [the beneficiary]." Counsel continues, "More to the point, Petitioner submits that, by issuing the Federal grant to [the beneficiary] and requiring [him] to

work in this field for a full six years, the U.S. Education Secretary has already determined that it is in the national interest that [the beneficiary] do so.”

Despite the petitioner’s heavy reliance on the alleged determination by the U.S. Education Secretary regarding the beneficiary’s importance to the national interest, the record does not include a single recommendation letter from anyone at the Department of Education, including RSA. In fact, the record does not even include any evidence of the scholarship itself other than the assertions of the beneficiary’s references and evidence of a Department of Education grant to Fort Valley State University. Without evidence of the requirements for the scholarship and the number issued, we cannot determine the significance of this scholarship. We are also unable to determine whether the considerations for awarding the scholarship match those set forth in *Matter of New York State Dept. of Transportation*.

We note that a review of RSA’s website, www.ed.gov/offices/OSERS/RSA/PGMS/RT/scholrsp.htm, reveals the following:

RSA awards grants to colleges and universities for providing scholarship assistance to students. Students interested in scholarships should apply directly to the college or university program. **RSA does not provide applications or become involved in the selection of recipients of the scholarships.**

(Emphasis added.) Thus, counsel’s implication that the U.S. Department of Education has reviewed the personal achievements of the beneficiary and decided that it is in the national interest for the beneficiary as an individual to work in the United States as a rehabilitative counselor is disingenuous and misleading. Fort Valley State University is the entity that awarded the scholarship with grant money from RSA without any input from RSA. That the university chose to issue the scholarship to an individual who had yet to receive authorization to remain in the United States to work after graduation does not in any way obligate the Bureau to issue a national interest waiver. Thus, the main argument throughout the proceedings is not only unpersuasive, but based on a false premise. Nevertheless, we will consider the remaining evidence under the test set forth in *Matter of New York State Dept. of Transportation*. We note, however, that doubt cast on any aspect of the petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Similarly, counsel’s mischaracterization of the scholarship seriously reduces the credibility of counsel’s characterizations of the remaining evidence.

We concur with the director that the beneficiary works in an area of intrinsic merit, rehabilitative counseling. We further recognize the intrinsic merit of providing the disabled with rehabilitative services in a language they can comprehend.

The director then concluded that the proposed benefits of his work, improved counseling for disabled Chinese speakers in Georgia or wherever the beneficiary ultimately works, would not be national in scope. On appeal, counsel argues that the benefits of the beneficiary’s work would be

national in scope because Congress and the U.S. Department of Education have determined that rehabilitative counselors serve the national interest.

Counsel is not persuasive. We have already acknowledged that rehabilitative counseling, including such counseling for those who do not speak English, has intrinsic merit. The issue is whether the impact of this alien will be national in scope. *Matter of New York State Dept. of Transportation, supra*, provides several examples of employment that is in the national interest but where the impact of a single member of the profession would not be national in scope.

For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

Id. at 217, n. 3. The record contains no evidence that the beneficiary's work as a rehabilitative counselor would impact the field of counseling as a whole so as to have a national impact. For example, the petitioner has not submitted evidence that the beneficiary has published widely cited articles in the field or other evidence of a similar influence. The fact that the beneficiary's clients may leave the area is unconvincing. Thus, we concur with the director that while the proposed benefits of the beneficiary's work with his clients would benefit his local community, it would not be national in scope.

It remains to determine whether the beneficiary will 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 beneficiary's contributions in the field are of such unusual significance that the beneficiary merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate that the beneficiary has a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

The main argument throughout the proceedings is that the beneficiary's "unique" ability to speak Chinese in and of itself warrants a waiver of the labor certification process. Counsel argues that the labor certification process is too lengthy and that it will prevent the beneficiary from fulfilling his scholarship obligation because his H1-B will expire before he can adjust status to that of a lawful permanent resident. Counsel concedes, however, that the beneficiary can extend his H1-B visa for six years, the length of his commitment. That the State of Georgia does not pursue H1-B visas on behalf of prospective employees is not a relevant consideration. Even aliens in professions that are

typically self-employed must meet all three prongs of the test set forth in *Matter of New York State Dept. of Transportation*. The unavailability of the labor certification process alone is insufficient. *Id.* at 218, n. 5. Moreover, the RSA grant permits employment with a private entity that has a contract with a state or federal agency. As such, it is not clear that there are no employers who might petition for the beneficiary as a nonimmigrant or even an immigrant worker. Thus, counsel's argument is not persuasive. Nothing in the legislative history suggests 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. *Id.* at 223.

Counsel further argues that a labor certification application can not specify that the prospective employee speak a foreign language unless at least 50 percent of its clientele speaks that language. Thus, counsel concludes that the labor certification process would be "futile." Yet, in its cover letter, the petitioner stated:

[The beneficiary] possesses a *bona fide* graduate degree from an American University in a field where there is a demonstrated demand, indeed his scholarship for study was granted precisely to fill a gap in the work force in his specific area of study.

(Emphasis in original.) In response to the director's request for additional documentation, the petitioner stated, "there is a crying need at present for qualified Rehabilitation Counselors." The petitioner later stated, "The shortage of qualified practitioners in the field is still acute, otherwise the government would not be actively assisting in the recruitment of and professional education of candidates for what is a career category still in its infancy." Cynthia Sellers, Vice President for Student Affairs at Fort Valley State University, asserts that the RSA's scholarship was "designed to address a national shortage in the professional ranks." Given these assertions, even assuming an employer were not able to specify that the job requires a knowledge of Chinese language and culture, the petitioner has not established that a labor certification application would be futile. Regardless, as stated above, the inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that the self-employed alien will serve the national interest to a substantially greater degree than do others in the same field. *Id.* at 218, n. 5.

The record contains several reference letters. The letters provide general praise of the beneficiary's work ethic and professionalism and many refer to the beneficiary's bilingual skills. The references provide no examples of any past history of influence on the field as a whole. Further, there are no letters from those who have not taught or worked with the beneficiary who have heard of him and attest to his influence in the field. The fact that the beneficiary happens to originate from China and, thus, speaks Chinese, is not evidence that he has made or will make an impact on the field of rehabilitative counseling other than to benefit his specific clients, which, while having intrinsic merit, is not national in scope. If the Bureau were to accept that the beneficiary's bilingual ability warrants approval of the waiver, the Bureau would need to approve the waiver for every alien from a non-English speaking country with a degree in a profession that provides services to the public (social workers, therapists, doctors, psychologists, etc.) The

petitioner has not established that Congress intended the national interest waiver to serve as a blanket waiver for all bilingual aliens providing services to the public.

On appeal counsel argues that the Bureau should consider the beneficiary's accomplishments prior to entering his current field. While the beneficiary's dictionary and foreign investment guide might suggest that the beneficiary has demonstrated accomplishments unrelated to his field, it does not show a record of achievement with some degree of influence on his current field as required. The petitioner has not even demonstrated that the dictionary and investment guide are particularly influential in their own fields.

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.

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