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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

File: [REDACTED] Office: NEBRASKA SERVICE CENTER

Date: MAY 29 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:

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, Nebraska Service Center. The director certified the decision to the Administrative Appeals Office (AAO) for review. The director's decision 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 an alien of exceptional ability and as a member of the professions holding an advanced degree. The petitioner seeks employment as executive director of the International Self-Reliance Agency for Women (ISAW). 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 has 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) . . . 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.

The first issue to be decided is whether the petitioner is a member of the professions with an advanced degree, and/or an alien of exceptional ability. Originally, the petitioner claimed eligibility solely as an alien of exceptional ability, but in a later communication, counsel has claimed that the petitioner qualifies as a member of the professions holding an advanced degree "and, therefore, she is not required to also meet the separate standards for showing 'exceptional ability.'" The director concurred with this latter claim, and concluded that it was, therefore, unnecessary to reach a finding regarding the petitioner's original claim of exceptional ability.

The record, however, does not support this finding. The regulation at 8 C.F.R. 204.5(k)(2) defines a "profession" as "one of the occupations listed in section 101(a)(32) of the Act, as well as an occupation for which a United States Baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." The petitioner's occupation is not listed in section 101(a)(32) of the Act, and the burden is on the petitioner to establish that a U.S. baccalaureate degree or its foreign

equivalent is the minimum requirement for entry into the occupation. The fact that the petitioner possesses a bachelor's degree is irrelevant, because it does not show that the occupation requires such a degree.

Furthermore, the reasoning that led to the conclusion that the petitioner holds the equivalent of an advanced degree is flawed. The petitioner documents the following education:

School/College/University	Major field	Dates	Degree received
Public Health College	Nursing	1971-1973	Community Nursing Diploma
Ethio-Swedish Chil. Hosp.	Nursing	1976	Ped. Nurse Prac. Diploma
Addis Ababa University	Biology	1979-1983	none (withdrew before completion)
Metropolitan State Univ.	Human Svcs.	1995-1997	Bachelor's Degree

The petitioner does not hold, nor does she claim to hold, any actual degree above a baccalaureate. Therefore, the petitioner must show that she has the equivalent of such a degree. The petitioner has submitted an evaluation of her academic credentials, in which the evaluator determined that the petitioner's educational background and employment experience amount to "the equivalent of . . . a master's degree in community organization, resources and services from an accredited college or university in the United States."

8 C.F.R. § 204.5(k)(2) states, in pertinent part, "[a] United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree." The regulation at 8 C.F.R. 204.5(k)(3)(i) states:

To show that the alien is a professional holding an advanced degree, the petition must be accompanied by:

(A) An official academic record showing that the alien has an United States advanced degree or a foreign equivalent degree; or

(B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

Thus, the regulations clearly define what constitutes the equivalent of a master's degree. The petitioner did not hold a bachelor's degree in any field until December 1997. She filed the petition only a few months later, in July 1998. Therefore, it is mathematically impossible for the petitioner to have accumulated five years of post-baccalaureate experience prior to the filing date. The evaluator had considered all of the petitioner's employment experience, but nearly all of that experience took place before the petitioner obtained her bachelor's degree. Thus, by definition, none of that experience is qualifying post-baccalaureate experience. Indeed, the evidence showing that nearly all of the petitioner's experience in the field took place before she had a bachelor's degree merely confirms that entry into the occupation does not require a bachelor's degree. The record therefore shows that the petitioner is not a member of the professions, and she did not, as of the time of filing, possess what the

regulations define as the equivalent of a master's degree. The director's finding to the contrary is plainly in error, and is hereby withdrawn.

Because the petitioner is not an advanced-degree professional, we must consider the petitioner's initial claim of exceptional ability. The regulation at 8 C.F.R. 204.5(k)(3)(ii) sets forth six criteria, at least three of which an alien must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business. These criteria follow below.

We note that the 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 therefore shows "exceptional" traits.

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.

As noted above, the petitioner holds a B.A. degree in Human Services from Metropolitan State University in St. Paul, Minnesota. This degree appears to satisfy this criterion. Given the petitioner's documented pre-baccalaureate work in the field, a bachelor's degree clearly exceeds the minimum requirements for entry into the field.

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.

The petitioner's early employment experience is in the field of health care, which is not the occupation she seeks in the United States. On her Form ETA-750 Statement of Qualifications, the petitioner claims relevant employment experience from 1985 to 1987 as a project officer for the International Coordinating Committee for Welfare and Development Programs in Addis Ababa, and from 1990 to 1993 as program coordinator and national committee secretary for the Inter-African Committee on Traditional Practices, Ethiopia. According to documents in the record, the actual name of the organization is the National Committee on Traditional Practices of Ethiopia (NCTPE). The petitioner does not specify the months she began or ended this employment, nor did she specify the number of hours worked each week, although the form requests that information.

The petitioner states that in 1990 (no month specified) she began working "40+" hours per week as the founder and executive director of the Women's Self-Reliance Association, Ethiopia. She does not specify when she stopped working in this capacity. The petitioner has spent most of her time since August 1994 in the United States. Since 1995 (again, no month specified), the petitioner claims to have worked "40+" hours per week in her current capacity as executive director of ISAW. The

petitioner was simultaneously studying toward her bachelor's degree, typically taking three four-credit courses per quarter.

As evidence of the petitioner's employment experience, counsel cites exhibits B, D and H. Exhibit B consists of letters from two faculty members at Metropolitan State University. These individuals do not represent any entity that has ever employed the petitioner and therefore the letters are not letters from employers.

Exhibit D pertains to ISAW; some of the documents also specifically refer to the petitioner. The documents identify the petitioner as the founder of ISAW, and indicate that the organization was founded in April 1995. Thus, the petitioner's work with ISAW up through the filing of the petition in the first week of July 1998 represents a maximum of roughly three years and three months, assuming that this work is in fact full-time employment. The petitioner's own resume deems this effort to be "volunteer" work. Volunteer work is not employment, nor is it a viable means for the petitioner to support herself. The petitioner states that she will earn \$24,000 per year but the record contains no evidence to show the amount or source of the petitioner's earnings in the U.S. from her arrival to the date of filing.

Exhibit H refers to the petitioner's work with the Women's Self-Reliance Association. The documents do not state a specific establishment date, but the earliest dated reference to the association is in a letter dated May 14, 1991. From mid-May 1991 to the petitioner's departure for the U.S. in mid-August 1994 amounts to three years and three months. While the petitioner was already working for the association as of the date of the letter, the letter does not indicate when the employment began. While the petitioner states that the association was founded in 1990, a newspaper clipping in the record states that it was "established in 1992." This date is clearly not the starting date of the association's very existence, as it is contradicted by an earlier letter. Nevertheless, other materials in the record indicate that the association existed in, at best, embryonic form as late as September 13, 1991. A letter bearing that date states that the association "is in the process of being established."

A letter from Getabun Belay, coordinator of the International Coordinating Committee for Welfare and Development Programs in Addis Ababa, states that the petitioner worked as a project officer from December 2, 1985 to May 31, 1988, for a total of two years and six months. With the above employment, the aggregate total is roughly nine years.

A letter from NCTPE states that the petitioner served as "NCTPE coordinator" from April 10, 1990 to May 1993. The letter does not specify whether the employment was part time or full time. Considering that the petitioner claims to have worked "40+" hours per week for the Women's Self-Reliance Association during the overlapping time period of 1990 to 1994, the petitioner would encounter serious credibility problems if she were to claim that she worked full time at both of these organizations from 1990 to 1993.

As shown above, the petitioner has documented intermittent employment in her current field from December 1985 to the date of filing in July 1998, but none of this documentation states that the employment was full-time. The petitioner herself only claims full-time employment from 1990 onward, insufficient to establish ten years of full-time experience as of July 1998.

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

The petitioner submits documents showing that she received several student awards from Metropolitan State University, such as the Community Service-Learning Internship Award. Limited as they are to students, these awards do not compare the petitioner to established individuals actually working in the field. The record also shows that local attorney [REDACTED] nominated the petitioner for two local community service awards, but it does not show that the petitioner actually won them. A letter in the record informed the petitioner that she did not receive one of the awards, and the nomination form for the other award was submitted only days before the petition was filed.

As further evidence of recognition, counsel cites local newspaper articles mentioning the petitioner and her organizations, but newspaper articles are not recognition by peers, governmental entities, or professional or business organizations. The articles themselves, furthermore, do not reflect that the petitioner had received recognition from the above sources.

For the reasons discussed above, we withdraw the director's finding that the petitioner qualifies as a member of the professions holding an advanced degree, and we cannot find that the petitioner qualifies as an alien of exceptional ability. 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. This issue is moot, given the petitioner's ineligibility for the underlying classification, but we shall address it here as it was a principal ground for denial in the director's decision.

Neither the statute nor the 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 regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now the Bureau] 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.

Counsel describes the petitioner's work:

[The petitioner] has used her education and experience as a health care professional¹ and Women's advocate to benefit women in the United States. . . . ISAW . . . now receives grants from major foundations and Minnesota State agencies to promote the health care, training and employment of refugee and immigrant women. . . .

[The petitioner] has provided effective leadership to ISAW, expanding upon its goal of assisting women in establishing their own businesses, addressing the needs of immigrant women in the field of health and protection from domestic abuse.

Counsel asserts that the petitioner's "work with immigrant women is a model for women and human service organizations addressing the needs of under qualified workers throughout the U.S." Counsel does not, however, identify any other group that has in fact used the petitioner's organization as a model. One of the petitioner's former professors at Metropolitan State University has stated that the petitioner's "program/agency can serve as a model" but this is not evidence that it actually is such a model. With regard to ISAW's grant funding, the petitioner has not shown that this funding (\$71,300 as of the filing date) distinguished ISAW from other charitable or social service organizations.

The petitioner submits background documentation establishing her experience in leadership positions at social service organizations. The petitioner's competence is not in question, but it remains that heading such an organization is not automatically grounds for a national interest waiver; the statute and regulations neither provide nor imply blanket waivers for workers in that field.

The director requested further evidence that the petitioner has met the guidelines published in *Matter of New York State Dept. of Transportation*. In response, counsel has argued that the requirements in that

¹ Counsel here uses the term "professional" in a colloquial sense. The petitioner is not a health care professional in the regulatory sense because she holds no baccalaureate degree pertaining to health care, and her employment in health care was never in a professional capacity. Nursing, a career available to individuals with two-year associate degrees, is not a "profession" as the regulations define that term.

precedent decision “are beyond the scope of the waiver as originally established by Congress,” but offers no finding to that effect by any court or other competent authority. Counsel’s disagreement with the precedent decision aside, the director remains bound by precedent, and the director’s adherence to such precedent cannot reasonably be construed as error. Recognizing this, counsel turns to addressing the guidelines set forth in that decision. The intrinsic merit of the petitioner’s work, providing social services to refugees and underqualified workers, is not in question.

To show the national scope of the petitioner’s work, counsel cites new evidence showing that the petitioner “is currently working with a colleague to establish a branch office in New York City,” and that “a social worker in San Jose, California, . . . is also interested in establishing a branch or related organization in his area.” The record shows that neither of these branches existed at the time the petitioner responded to the director’s notice, much less at the time of filing. The petitioner’s unrealized plans to expand ISAW at a later date do not establish that her work had national scope as of the petition’s filing date.

Counsel cites a \$40,000 grant that ISAW received from the Minnesota Department of Corrections. Counsel states that the grant letter is documentation of ISAW’s “receipt of federal funds.” The letter, dated July 7, 1998 (the day after the July 6 filing date), states “[t]he grant funds come from state and/or federal sources.” The “and/or” indicates that the funds may have come entirely from state sources. Furthermore, the “state and/or federal sources” are not identified. It remains that the entity that decided to provide the grant money was a state agency. Its disbursement of funds that may possibly have come from federal sources does not establish federal interest in the petitioner’s work, or that ISAW has had (or is reasonably expected to have) a greater impact than countless other social service organizations that depend on donations and grant money.

Counsel states that, because the petitioner is self-employed, labor certification is not a realistic option. The petitioner must still demonstrate that a waiver of the statutory job offer requirement is in the national interest. In this instance, the petitioner established ISAW in April 1995, over three years before she filed the petition in July 1998. The record indicates that, in that time, ISAW became a locally respected charitable organization, but there is no persuasive evidence that the petitioner’s organization had achieved national scope or had otherwise had an impact beyond that of other organizations with the same general goals.

The director denied the petition, acknowledging the intrinsic merit of the petitioner’s work but finding that the petitioner’s own contribution does not warrant a waiver of the job offer requirement that, by law, attaches to the classification that the petitioner chose to seek. The director noted the absence of significant recognition by individuals or organizations that have not worked directly with the petitioner.

The director certified the decision to the AAO for review on December 14, 1999, and informed the petitioner of her right to submit a brief or written statement “[w]ithin 30 days of this notice.” The record does not indicate that the petitioner submitted anything during this 30-day period. In a letter to the petitioner dated January 3, 2000, counsel advised the petitioner “[a]t this point, there is nothing we need to do besides wait to hear from the Administrative Appeals Unit” (now AAO). This letter supports the conclusion that no timely supplement was submitted.

The petitioner submitted the above letter from counsel to the AAO a year and a half later, on June 29, 2002. At that time, the petitioner offered further arguments and evidence in support of her petition. There is no regulation that allows the petitioner an open-ended or indefinite period in which to supplement the record after a petition has been denied. Rather, 8 C.F.R. § 103.4(a)(2) specifically states “[t]he affected party may submit a brief to the officer to whom the case is certified within 30 days after service of the notice.” The regulation contains no provision to extend this period. Any consideration at all given to untimely submissions is discretionary.

The petitioner submits documentation showing that she received a Master of Public Affairs degree from the University of Minnesota in October 2000. Other documents discuss the petitioner’s activities in the years following the filing of the petition, including her receipt of a Bush Leadership Fellowship from the St. Paul-based Bush Foundation in April 1999. The local nature of this fellowship is evident from a letter from the foundation, indicating that the winners of the fellowship would be named “in a press release to newspapers in Minnesota, North Dakota, South Dakota and Wisconsin.”

The petitioner states “[m]y participation in international conferences and meetings could also be of interest to the United Stat[e]s,” and cites as an example a then-upcoming conference to be held in Toronto in August 2002. Attendance at a conference of this kind does not inherently establish eligibility for the waiver. Furthermore, documentation from 1999-2002 does not show that the petitioner was already eligible for the waiver in July 1998. Aliens seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971).

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 director’s decision is affirmed. The petition is denied.