

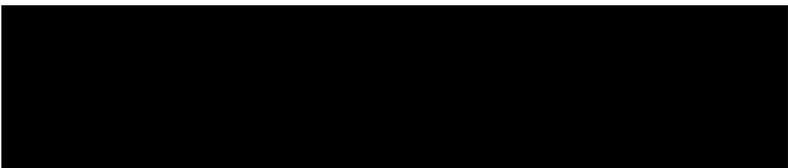
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U.S. Department of Homeland Security
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Washington, DC 20536



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



MAR 11 2004

FILE: [redacted] Office: VERMONT SERVICE CENTER
EAC 02 142 52852

Date:

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 of the Administrative Appeals Office 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.

Mari Johnson
60 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, a public school system, 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. At the time of filing, the beneficiary was working as a teacher in the Norwalk Public School system. 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.

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.

The beneficiary holds a Master's degree in Educational Media from Fairfield University. The director found that the beneficiary 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 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 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 profession is so important that any alien qualified to work in that profession 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 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. The 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 note 6.

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.” On July 29, 2002, director issued a request for evidence notifying the petitioner of this omission, stating “...please submit Form ETA-750B in duplicate...” The petitioner did not provide this document, and therefore, by regulation, the beneficiary cannot be considered for a waiver of the job offer requirement. The director’s notice of denial, however, did not inform the petitioner of this critical omission. Below, we shall consider the merits of the petitioner’s national interest claim.

In a letter submitted in response to the director’s request for evidence, counsel states:

Norwalk Public Schools is offering [the beneficiary] a position as a full-time, certified and tenured secondary teacher at West Rock Middle School. She teaches Foreign Language (Spanish) at the secondary level, and provides leadership for the district in the area of Educational Technology. She is also pursuing cross-endorsement in Mathematics from the Connecticut State Department of Education. These are all shortage areas, not only in the Norwalk District, but across the United States. [Please see documentation regarding local and national teacher shortages in Exhibit 12]

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*. No official of the petitioning entity explains why the national interest is better served by avoiding the labor certification process, rather than by following it. If U.S. workers are unavailable and the beneficiary is qualified for the position, it is not apparent why the petitioner could not readily obtain labor certification and thereby relieve itself of the added burden of establishing national interest.

The petitioner provided a letter of support from Fay Ruotolo, Human Resources Officer, Norwalk Public Schools, stating:

We are applying for an immigrant visa on [the beneficiary's] behalf in order to continue to benefit from her expertise, both as a member of the Teacher Training Technology Institute and as a middle school Spanish teacher, in the integration of technology into classroom teaching.

* * *

[The beneficiary] has made a number of outstanding contributions to the incorporation of educational technology into the Norwalk Public Schools. As a member of the District Technology Planning Committee, she participated in the drafting of the Norwalk District Strategic Instructional Technology Plan, and continues to participate in the evaluation and ongoing development of the Plan. She has also made numerous contributions to professional staff development in the use of technology in the classroom as a Professional Staff Developer and Trainer.

For the past three years, [the beneficiary] has been part of a project technology team that has created the Teacher Training Technology Institute (TTTI), a community based partnership between Norwalk Public Schools, Norwalk Community College, Norwalk Federation of Teachers.... This partnership raises private funding and creates training and development activities for our city's teachers to enable them to incorporate technology into their classrooms.

[The beneficiary] is an experienced certified and tenured secondary teacher for the City of Norwalk, with over six years of teaching experience as a middle school Spanish teacher in our system. In addition to her Master's degree in Educational Technology, she is also working on a cross-endorsement in Mathematics. She holds a Professional Teaching License from the Connecticut State Department of Education. She is fully bilingual in Spanish and English and knowledgeable in French.

Objective qualifications, such as those described in Fay Ruotolo's letter, are amenable to the labor certification process. Pursuant to *Matter of New York State Dept. of Transportation, supra*, 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.

The petitioner submitted background documentation showing the importance of enhancing education through the incorporation of new technologies in primary and secondary schools. The petitioner's submission included information from the U.S. Department of Education and a press release pertaining to the "Enhancing Education Through Technology" program under the *No Child Left Behind Act of 2001*. Also provided was a "Technology Report on Connecticut Schools" prepared by Connecticut's Lieutenant Governor. The documentation presented addresses the issue of the substantial intrinsic merit of the beneficiary's work. CIS (Citizenship and Immigration Services) does not dispute that advancing technology in the classroom is

important to our nation's school systems. Also submitted was evidence of the beneficiary's local contributions to the Norwalk, Connecticut Public School System. For example, the petitioner provided a certificate of appreciation from the Norwalk Public School System thanking the beneficiary for her contribution to the school district's strategic instructional technology plan and evidence pertaining to her involvement with Norwalk's Teacher Training Technology Institute.

General arguments about the undoubted importance of teachers to society or the introduction of technology to the classroom are not sufficient to demonstrate eligibility 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. Beyond establishing her eligibility for the underlying visa classification, the petitioner must also demonstrate that the beneficiary's work has significantly influenced the teaching profession in general or the field of educational technology as a whole. In this case, the petitioner has not shown that the beneficiary's work has had a significant impact beyond her local school system or the State of Connecticut.

After a review of the documentation presented, we concur with the director's finding that the petitioner has failed to establish that the beneficiary's work is national in scope or that she would serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. The director's decision stated:

While the beneficiary's involvement in promoting educational technology within [her] school district is well documented, there is no evidence or indication of how the beneficiary's work is on a national level... While educational technology is of national interest..., the impact of a single school teacher in one school district is not in the national interest for purposes of waiving the job offer requirement of Section 203(b)(2)(B) of the Act. [The petitioner] has not shown that the impact of the beneficiary's duties will be national in scope.

The director also concluded the petitioner had not shown that "the beneficiary's work has resulted in findings of...significance to the field of education which have been widely implemented or that the beneficiary is more skilled than others who perform the same type of work."

On appeal, counsel states:

The denial errs in concluding that the beneficiary's work is not national in scope. While the alien's employment is in a particular school system, her exemplary work in training other teachers has an exponential effect that therefore serve the interests of other regions of the country. Failing to increase proficiency among teachers in educational technology would have an adverse impact on the national interest.

According to the documentation presented, the beneficiary is employed as a "middle school Spanish teacher." Her primary duties and responsibilities involve teaching Spanish to children rather than serving as a professional staff developer and trainer of teachers in the area of educational technology. Even if it were demonstrated that the instruction of teachers in the Norwalk Public School system (rather than teaching

Spanish) was her primary job function, her impact would still be limited to individuals within her particular school system. The petitioner has not shown, for example, that the beneficiary's educational technology training classes instruct teachers from "other regions of the country" or that she has developed specific training methods viewed throughout her field (at the national level) as particularly significant.

Counsel further states: "The beneficiary's activities serve the national interest to a substantially greater degree than a minimally qualified U.S. worker, and the national benefit served is sufficiently great as to outweigh the need for labor certification. The evidence establishes that the occupation in this case serves the national interest."

Pursuant to *Matter of New York State Dept. of Transportation, supra*, we generally do not accept the argument that a given occupation is so important that any alien qualified to work in that occupation must also qualify for a national interest waiver. We note Congress' creation of a blanket national interest waiver for physicians working in under-served areas. The creation of Section 203(b)(2)(B)(ii) of the Act demonstrates Congress' willingness to grant such blanket waivers. We cannot ignore, the absence, to date, of such a blanket waiver for school teachers. Furthermore, the creation of the blanket waiver for certain physicians demonstrates that no such blanket waiver for any given occupation is implied in the statute. Otherwise, the blanket waiver for certain physicians would be superfluous.

Matter of New York State Dept. of Transportation, supra, the published precedent decision under which this petition has been reviewed, indicates that while education is in the national interest, the impact of an individual teacher would be so attenuated at the national level as to be negligible.

[T]he analysis we follow in "national interest" cases under section 203(b)(2)(B) of the Act differs from that for standard "exceptional ability" cases under section 203(b)(2)(A) of the Act. In the latter type of case, the local labor market is considered through the labor certification process and the activity performed by the alien need not have a national effect. 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.

Id. at 217, note 3.

In this matter, the petitioner has not established that the beneficiary's work has had a national impact, or that her past record of accomplishment significantly distinguishes her from others in her field. The available evidence presented here does not establish that the beneficiary'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.

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 project or 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, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.