

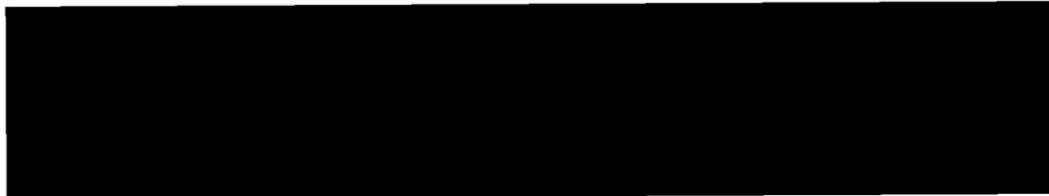


U.S. Citizenship  
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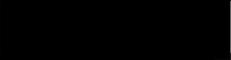
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FILE:



Office: TEXAS SERVICE CENTER Date: MAR 27 2006

SRC 04 232 52404

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)

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary 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 is a community health outreach organization that seeks to employ the beneficiary as an outreach education coordinator. 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 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 director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention 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 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 Citizenship and Immigration Services] 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 beneficiary’s work:

[The petitioner] is a non-profit health outreach program funded by the Florida Department of Health. Its mission is to work with the Haitian population in the United States and provide interventional assistance and education to help bring the HIV/AIDS epidemic under control. Specifically, [the petitioner] targets Haitian and African American communities that are disproportionately affected with the virus. . . .

As the Outreach Coordinator for [the petitioner, the beneficiary] meets with members of the Haitian community and interviews them to assess their risk of HIV/AIDS exposure and transmission. He evaluates the success rates for the various treatment programs for infected clients and keeps accurate statistics, which are used for both local and national purposes in formulating AIDS policy. He also organizes and promotes awareness programs to advise and educate the Haitian communities concerning HIV/AIDS treatment options, exposure risks, transmission risks, and containing the spread of the virus.

Elsewhere in the same letter, counsel states:

[The beneficiary’s] work at [the petitioning entity] includes street and community outreach, risk-reduction counseling, prevention case management, and community-level intervention, all of which have been identified by the CDC as successful health education and risk

reduction activities. [The beneficiary] targets persons at an increased risk of becoming infected with HIV or, if already infected, transmitting the virus to others.

In addition to his work with the state of Florida, [the beneficiary] has lectured around the nation on outreach activities and has participated in many Health Fairs, specifically those targeting Haitian communities in the United States. Because [the beneficiary] is familiar with the cultural nuances of Haitians and is fluent in Creole and French, his outreach and education on AIDS prevention and awareness has been invaluable to the growing Haitian population in the United States. . . .

There is no possibility whatsoever that another individual who is either a U.S. citizen or permanent resident could replace [the beneficiary].

It is beyond serious dispute that HIV/AIDS is, in the aggregate, a national issue, and not a parochial concern limited to certain geographic regions, economic strata, or ethnic communities. That being said, performing productive work on HIV/AIDS is not *prima facie* grounds for a waiver. General arguments regarding the importance of a given field of endeavor, or the urgency of an issue facing the United States, cannot by themselves establish that an individual alien benefits the national interest by virtue of engaging in the field or seeking an as yet undiscovered solution to the problematic issue. Eligibility is not established solely by a showing that the beneficiary's field of endeavor has intrinsic merit. A petitioner cannot establish qualification for a national interest waiver based solely on the importance of the alien's occupation. It is the position of the Service to grant national interest waivers on a case-by-case basis, rather than to establish blanket waivers for entire fields of specialization. *Matter of New York State Dept. of Transportation* at 215, 217.

Counsel asserts that the beneficiary has earned "national acclaim in the medical community" owing to his "many years of experience in the fields of internal medicine, surgery, and family planning," but counsel also observes, in a footnote, that the petitioning facility "does not provide clinical treatment" and therefore the beneficiary will not be employed as a physician. The petitioner submits a copy of a United States patent he received for his invention of a type of surgical forceps. The petitioner does not explain how this patent is relevant to his work in community outreach. Patent documents indicate that the forceps can be used in the performance of vasectomies, but while vasectomy is an effective means of reproductive sterilization, there is no indication that the procedure reduces the risk of transmission of HIV. It appears, therefore, that the submission of the patent was intended as a general demonstration of the beneficiary's medical expertise.

Counsel states that the beneficiary's work is national in scope because the Florida Department of Health, which has provided funding to the petitioner, "is a participant in a large federal project entitled 'Advancing HIV Prevention Initiative.'" Counsel does not discuss the extent, if any, to which the beneficiary's efforts have affected this project at the national level (for instance, by influencing the strategies employed by project participants in other parts of the United States). Documents submitted with the petition indicate repeatedly that the petitioner received federal funding from the CDC as a "community-based organization" (CBO). For purposes relating to HIV, the CDC defines a CBO as "[a]n organization that provides services to locally defined populations, which may include persons infected with, or affected by, HIV" See [http://www.cdc.gov/hiv/projects/epi\\_guide/Glossary.pdf](http://www.cdc.gov/hiv/projects/epi_guide/Glossary.pdf), visited March 14, 2006. Thus, work with a CBO is,

by CDC's definition, local in scope. Given this information, the beneficiary's work is presumptively local unless the petitioner can show that the beneficiary coordinates CBO activities at a national level, has formulated policies or practices that other CBOs have implemented nationwide, or otherwise undertakes activities with direct and significant impact beyond the local level.

The petitioner submits letters from several witnesses who attest to the beneficiary's contributions to HIV/AIDS education and his work with patients in central Florida, especially Haitian immigrants. Many of the witnesses are currently or formerly affiliated with the Orange County Health Department. A few of the letters focus on the beneficiary's work as a clinical physician in Haiti, and thus they address work that the beneficiary no longer performs and has no evident intent to resume. Several witnesses rightly point out that HIV/AIDS is a national problem, but they offer no persuasive argument that the beneficiary's work has had, or is likely to have, a national impact. A fair amount of the beneficiary's work appears to involve one-on-one work with individual patients.

On April 6, 2005, the director issued a request for evidence (RFE), instructing the petitioner to submit evidence of the beneficiary's "ability to benefit the national interest to a substantially greater degree than others in the field." The director also requested independent evidence to show the extent of the beneficiary's impact on the field, and to establish that the beneficiary is qualified to practice medicine in the United States.

In response, counsel reiterates the previous assertion that the beneficiary does not work as a physician or otherwise provide medical services, and therefore the issue of licensure or other medical credentials is not pertinent.

Counsel states "it should be noted that the beneficiary widely regarded as one of the foremost AIDS Prevention Educators and Outreach Coordinators in the Haitian community in the United States." The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The burden is on the petitioner to substantiate this claim, for instance by showing that his work is recognized throughout "the Haitian community in the United States," as distinct from the Haitian community in the Orlando area. According to the 1990 U.S. Census, 55% of Haitian immigrants live in the northeastern United States, compared with 41% in the southern states. (Source: <http://www.census.gov/aprd/cqc/cqc14.pdf>, visited March 14, 2006.) Thus, the majority of Haitian immigrants are not in central Florida. The petitioner has already largely limited the beneficiary's impact to the Haitian immigrant population; the evidence appears to narrow the beneficiary's impact even further, to Haitian immigrants in part of one state. The record contains no evidence of the beneficiary's impact among Haitian immigrants in, for instance, New York or Boston.

The petitioner submits documentation showing that the online HIV advocacy publication [REDACTED] honored the beneficiary as an "Outstanding Prevention Educator" in 2005. [REDACTED] editorial director of [REDACTED], states:

In honor of our tenth anniversary of publications, we asked our 600,000 monthly readers to help identify the outstanding men and women who make a difference as HIV Leaders in America today. [The beneficiary] is such an HIV Leader, in the field of HIV prevention.

Following more than a thousand online nominations, a panel of experts judged the candidates and selected truly outstanding individuals in a variety of professional fields. [The beneficiary] was named one of only ten individuals who received the HIV Leadership Award as a Prevention Educator in the United States in 2005. . . .

The judges reviewed . . . the candidates' professional training, ongoing professional education, and responses in essay form to current challenges facing the profession. Another factor was uniqueness in meeting the needs of a particular community which, in [the beneficiary's] case, would include those in South Florida in need of HIV prevention, who are non-English speakers and/or come from a particularly challenged cultural background, such as those who have ties to Haiti.

In the opinion of the judges, [the beneficiary] is an important asset to HIV prevention in America, and that is why they honored him after this highly competitive process.

While we do not ignore the honor shown by this award, Ms. [REDACTED] letter does not contradict the finding that the beneficiary's work is local in its scope (specifically, his work relates to "those in South Florida . . . who have ties to Haiti"). TheBody.com's own story about the beneficiary, published in conjunction with this award, does not mention any specific innovations by the beneficiary in the area of HIV/AIDS prevention, nor does it indicate that his work has had, or will have, a noticeable effect outside the Haitian immigrant community in part of Florida. The title of the story is "Reaching Out to Haitian Immigrants in Central Florida."

Asked, in an interview, to describe his work, the beneficiary states: "I go from clinic to clinic. . . . Sometimes, I meet patients all day. . . . Sometimes, I devote my time to being a medical interpreter." The direct impact of work of this kind is limited to the individual patients that the beneficiary serves. The decision in *Matter of New York State Dept. of Transportation* contains this observation: "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, n.3. The same logic applies here.

Materials about the award include a description of the judging process, which states, in part:

While the quality of care or advocacy provided by the candidate was of paramount importance, and the depth of knowledge and experience of each candidate was a key consideration, judges were also encouraged to look "beyond the numbers" to select a group of winners that reflected the true diversity of frontline HIV leaders in each category. Special

consideration was given to geography, gender, ethnicity, target population and other variables pertinent to the specific category being judged.

It appears, therefore, that the beneficiary's selection was due, at least in part, to the acknowledged "special emphasis" on geographic and ethnic diversity – factors that do not appreciably demonstrate eligibility for the national interest waiver. The beneficiary appears to have been selected as an example, rather than for any wider impact or reputation that preceded his nomination.

Finally, we note that section 203(b)(2)(A) of the Act plainly states that aliens of exceptional ability are, as a rule, subject to the job offer requirement. Thus, exceptional ability in one's field is not, by itself, evidence of eligibility for the waiver. Turning now to the regulations, 8 C.F.R. § 204.5(k)(3)(ii)(F) states that evidence of recognition for achievements and significant contributions to the field by peers or professional organizations can form part of a claim of exceptional ability, but a finding of exceptional ability cannot rest entirely on such recognition. Thus, the beneficiary's [REDACTED] award would not suffice to demonstrate exceptional ability, let alone qualify him for the additional benefit of a national interest waiver. This is significant because the award is the only piece of documentary evidence that hints at any acknowledgement beyond the purely local level.

The petitioner submits a letter from Dr. [REDACTED], chairman of the Clinical Practice Committee of the American Academy of HIV Medicine and a physician practicing in southern Florida. Dr. [REDACTED] lists numerous other professional credentials and states "I lecture extensively on all aspects of HIV/AIDS, both internationally and throughout the U.S." There is no indication that the beneficiary has maintained a comparable level of exposure.

Dr. [REDACTED] describes the nation's overall need for qualified HIV educators, and he states that the beneficiary is "an extremely effective and remarkable educator and outreach coordinator" whose "impact on the communities he serves will be substantially greater than other workers who would minimally qualify for this position." There is no indication that this impact would extend beyond "the Haitian communities" in part of Florida. Dr. [REDACTED] states "a person's performance in this occupation is proportional to the number of lives he can save." When the beneficiary's impact is limited to one ethnic community in one geographical area, as the record repeatedly indicates in this instance, the number of lives he can save is tightly circumscribed.

Dr. [REDACTED] a Florida-based physician and researcher, describes her own efforts toward formulating an HIV vaccine and states: "My work is widely credited with the scientific breakthrough that launched a new era in biotechnology and a new and innovative method for developing vaccines and therapies for diseases. I have lectured worldwide . . ." Dr. [REDACTED] does not indicate that the beneficiary's work has had similar reach. Rather, Dr. [REDACTED] discusses the general importance of "people like [the beneficiary] who are out in the field daily," and states that the beneficiary "is an extremely effective educator in the Haitian community" with a "reputation throughout Florida."

The director denied the petition, acknowledging the intrinsic merit of the beneficiary's work but finding that the petitioner had not shown "that the beneficiary has skills or background that are unique and innovative and serve the national interest," or that others have "extensively cited and relied upon his work in AIDS

education.” The director also found that the beneficiary’s work “can have a national impact.” The AAO does not share this conclusion. While HIV/AIDS is surely an issue of national – indeed, global – concern, the work of local educators is not inherently national in scope. There has been no showing that the beneficiary engages in published research, helps to set national policy, or otherwise directly influences HIV/AIDS prevention beyond the local level.

On appeal, counsel identifies herself as counsel for the beneficiary. Counsel states that she has filed the appeal on the beneficiary’s behalf, and counsel repeatedly refers to materials that “the beneficiary submit[ted] evidence” in response to the RFE. The record contains Form G-28 Notice of Entry of Appearance as Attorney or Representative, indicating that this same attorney represents the petitioner, but we note that counsel’s choice of words is significant, considering that there is no evidence that the petitioner participated in the preparation or filing of the appeal (or, for that matter, the response to the RFE).

Counsel argues that materials in the record “demonstrate unequivocally that the beneficiary’s skills and background are unique and innovative and serve the national interest. . . . [T]he beneficiary does possess special skills, knowledge and abilities that could not be articulated on a labor certification with any realistic chance of success.” Counsel does identify these special skills, knowledge, or abilities.

Counsel states: “The beneficiary submitted three letters from very prominent and accomplished independent researchers and educators in the field of AIDS. . . . the RFE did not state how many letters would suffice to the satisfaction of the Service Center.” More important than the quantity of letters is the content of those letters. We have already discussed the content of the letters above. While each of the witnesses, in his or her own way, has some kind of national reach in HIV/AIDS research or education, the witnesses each state that the beneficiary is a valuable resource for one ethnic group in part of one state. We agree with the director’s finding that the petitioner has not shown that the beneficiary “has influenced the field” to a degree that would warrant a waiver.

Counsel quotes from an unpublished AAO decision from 2000 that has no force as precedent: “national interest waivers were frequently denied because of lack of independent corroboration of an alien’s impact, and because in this case the petitioner had submitted several letters of independent corroboration, fairness demands that consistent evidence of such impact should carry significant weight in favor of approval.” Not having the record of proceeding for the quoted decision before us at this time, the AAO can take no position on any specific similarities or differences between that record of proceeding and the record now under review. We may, however, observe that the quoted section addressed not only the independence of the witnesses, but also the “alien’s impact.” In the present matter, the record consistently shows the beneficiary’s impact to be very limited. The accomplishments of the witnesses stand out in contrast to those of the beneficiary.

We do not in any way wish to minimize the overall importance of HIV outreach and education, nor do we dispute that the beneficiary’s background suits him well to work with Florida’s Haitian immigrant community. This decision should in no way be construed as showing indifference to the very real challenges of working with an often disadvantaged immigrant community, attempting to surmount not only economic but cultural barriers as well in an effort to contain a deadly disease that has reached near-pandemic proportions in some parts of the world. At the same time, the beneficiary’s impact and influence appear to be

limited to the local level. Even within that local geographic area, there is no indication that the beneficiary's work has had any demonstrable effect on, say, Florida's Cuban immigrant community. Thus, the beneficiary's impact is confined not only geographically, but also ethnically within that local area. To approve a national interest waiver based on such a fact pattern would seem to compel the approval of waivers for hundreds, perhaps thousands, of other HIV/AIDS educators, each serving a different local ethnic enclave. Repeating this pattern for serious diseases such as tuberculosis, and other challenges facing such communities such as drug abuse, would effectively establish a blanket waiver for individuals who perform educational and other social work for local immigrant communities. While Congress has the authority to establish blanket waivers, as it did for certain physicians under section 203(b)(2)(B)(ii) of the Act, Congress has taken no such step for individuals in the beneficiary's profession.

We do not dispute the contention that the beneficiary's work has saved lives, and the beneficiary's efforts in this area have been commendable. At the same time, it is equally true that saving lives is not unique to HIV/AIDS educators. Physicians, police officers, lifeguards, firefighters and paramedics save lives in the most immediate and literal sense; others, like the beneficiary, save lives indirectly through education, intervention, research, the manufacture and inspection of safety equipment, and so on. Indeed, the alien beneficiary in *Matter of New York State Dept. of Transportation* was responsible for bridge safety.

In short, while HIV/AIDS educators perform valuable work, this career choice is not a guarantee of a national interest waiver; and we are not persuaded that this particular beneficiary qualifies for the waiver on the basis of being an HIV/AIDS educator with long experience, a medical degree and fluency in Creole. The record offers no demonstration of the beneficiary's significant impact outside of the limited community he serves, and no real objective comparison that shows that the beneficiary has had, and will likely continue to have, a greater impact than other qualified and competent HIV/AIDS educators. For instance, the record does not show that the petitioner has been largely responsible for a significant drop in infection rates in the community he serves, or that he has devised new methods that other educators, outside of Florida's Haitian community, have successfully adopted as models for their own work, with resulting similar decreases in infection rates.

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.