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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: MAY 04 2006
EAC 05 114 52960

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:

SELF-REPRESENTED

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, Chief
Administrative Appeals Office

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

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner describes her occupation as “philologist, linguist, teacher, researcher.” 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 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 (CIS)] 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 petitioner’s initial submission consisted entirely of copies of diplomas and other documents that indicate the petitioner is a qualified language teacher. These materials serve to show that the petitioner qualifies for the underlying immigrant classification, but the petitioner does not qualify for a waiver based only on her career choice. It is the position of CIS 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 217.

The director instructed the petitioner to submit additional evidence to meet the guidelines set forth in *Matter of New York State Dept. of Transportation*. In response, the petitioner states:

[T]he main theme of my research activity was the study of the connections and analogies between various cultural heritages. Both American Indians and Georgians are Ancient societies, but in History for known reasons it was impossible to establish cultural and trade relationship between above mentioned two civilizations. It was impossible to exchange any kind of information but in spite of such obvious restricted terms, it is observed some repeatability between for instance etymological or musical construction and content of heritages.

Natural insulate is very convenient medium for study some kind of influence of out of civilization, and in the long run it is very important method for study of existence of extraterrestrial civilizations at all (The same allegation is applied to explain strange similarity

between forms and methods of construction of Egypt's pyramids and south America's pyramids).

I think it is very important for American Society to develop the study of above-mentioned cultural ties and similarities.

Additionally, I am a three-languages-speaking person that is very important in Linguistics. Hundreds of thousands of Russian-speaking immigrants and tens of thousands are now living at three-state area (NY, NJ, CT). According to official data, given by Georgian Consulate in Washington DC, about sixty thousands Georgian-speaking residents are living now in U.S.A. Every of them are needed native-language-speaking bi- and trilingual teachers too.

Bilingual and particularly trilingual teachers are in profound deficit at tri-state area. I think I am able to provide such service in both public and private schools. I already serve as bona fide teacher at Georgian Church Sunday school.

The petitioner's claim to serve the national interest relies quite heavily on her claimed linguistic skills and her ability to teach English to native Georgian and Russian speakers. In this context, we cannot ignore the numerous grammatical errors in the petitioner's statement, partially reproduced above. The frequency of these errors is, indisputably, relevant when judging the extent of the petitioner's mastery of English.

In denying the petition, the director acknowledged the intrinsic merit of "cultural studies" and language teaching, but found that the petitioner's stated goal of teaching English in the "tri-state area" is inherently local rather than national in scope. This is consistent with *Matter of New York State Dept. of Transportation*, in which classroom teachers were included among examples of meritorious occupations for which an individual's impact "would be so attenuated at the national level as to be negligible." *Id.* at 217, n.3.

With regard to the claimed local shortage of trilingual teachers, the director observed: "given that the labor certification process was designed to address the issue of labor shortages, a shortage of qualified workers is an argument for obtaining rather than waiving the labor certification process. Further, specific skills or training, which are truly requirements for the job, can be articulated on an application for labor certification." These findings are also consistent with *Matter of New York State Dept. of Transportation* at 218 and 221.

On appeal, the petitioner states: "My research area is absolutely [*sic*] unique. Tri-language teachers are profound deficit [*sic*] in the U.S.A." The director had already advised the petitioner that a local shortage of trilingual teachers is, by itself, a favorable factor in seeking (rather than waiving) a labor certification. Repeating the same claim about the alleged shortage, therefore, cannot overcome this basis for denial.

With regard to the petitioner's "research area," teaching English to speakers of other languages does not constitute "research." Therefore, the petitioner must be referring, here, not to her language teaching work, but rather to a hypothesis presented in her earlier statement. While the meaning of that prior statement is not always easy to discern, it appears that the petitioner has claimed that cultural similarities between ancient Georgians and Native Americans can be explained only by invoking the "existence of extraterrestrial

civilizations” which visited the Earth and planted similar seeds of culture both in Eastern Europe and in North America, possibly at some prehistoric time.

The petitioner submits no evidence to show the extent of her research (as opposed to speculation) in this regard, nor has she shown that she has submitted her findings for peer review. The hypothesis that space aliens are responsible for perceived similarities between unrelated ancient civilizations would, if proven, have revolutionary implications in a great many fields of study. As an unsupported and untested assertion, however, the hypothesis remains little more than unsubstantiated conjecture.

As for the assertion on appeal that this “research area is [absolutely] unique,” the petitioner has already acknowledged that “[t]he same allegation is applied to explain strange similarity between forms and methods of construction of Egypt’s pyramids and south America’s pyramids.” The idea that extraterrestrial beings have intervened in ancient cultures can be found in a number of books, most notably *Chariots of the Gods?* by Erich von Däniken (published 1968). Such efforts, to date, have at times captured the public imagination but have yet to win significant acceptance among mainstream researchers.

Even if the petitioner’s suggestions regarding parallels in American Indian and Georgian culture are “unique,” as the petitioner claims, uniqueness is not, in and of itself, a qualifying factor for a national interest waiver. The fact that only one person performs a certain function or researches a certain subject does not automatically demonstrate that the function or research is, in fact, in the national interest.

The petitioner’s waiver claim rests on two grounds: (1) her “unique” comparative studies of two separate cultures, and her inference that perceived parallels between these two cultures are evidence of contact with “extraterrestrial civilizations”; and (2) a claimed shortage of Russian/Georgian/English teachers in the New York/New Jersey/Connecticut area. For reasons explained above, neither of these grounds demonstrates that the petitioner’s continued presence in the United States serves the national interest to a degree that would justify a waiver of the job offer/labor certification that, by law, normally applies to the immigrant classification that the petitioner has chosen to seek.

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.