

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

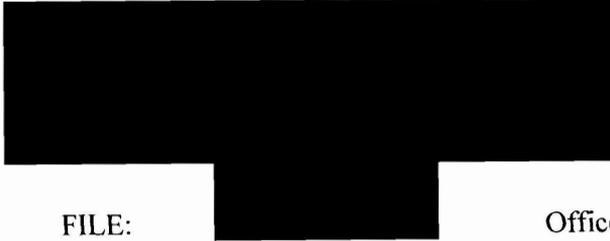
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

B5



FILE:

EAC 06 017 51048

Office: NEBRASKA SERVICE CENTER

Date: APR 08 2008

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:

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, Nebraska 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 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 initially stated that she seeks employment as an attorney, although she later disputed the director's use of that term. 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:

(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 (Commr. 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.

We also 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” in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner, a member of the District of Columbia Bar, described her goals in a statement that accompanied the initial filing of the petition:

I intend to create a professional service firm in the United States. It will provide creative solutions for individuals, businesses, and countries to take advantage of globalization. . . . [M]y firm will focus its resources on the integration of the disabled into the economy. . . .

My disability<sup>1</sup> should be a key factor in deciding the merits of my position and of my request for National Interest Waiver because persons with disabilities face many barriers in their daily lives, but also in getting an education and in finding employment. The argument is not

---

<sup>1</sup> The petitioner described her disability thusly: “I was diagnosed with Melorheostosis, which has left [me] with a physical disability that requires me to use crutches.”

that my disability should be the sole justification for me getting an immigrant visa. The argument is that the fact that I am disabled ought to play a role along with other evidence of my abilities and of my experience. In spite of my disability and the barriers I have faced because of it, I have been able to become a lawyer and to develop an exceptional ability in the field of globalization. I intend, now, to open a professional service firm that will help people with disabilities to integrate [into] the economy.

The AAO does not dispute the intrinsic merit of creating economic opportunities for the disabled, but we strongly disagree with the petitioner's assertion that her own "disability should be a key factor in deciding the merits" of the waiver request. The purpose of the national interest waiver is to maximize benefit to the United States. We must, therefore, weigh the waiver request in terms of what the petitioner offers the United States, rather than the obstacles the petitioner has had to overcome. For the petitioner to have built a successful career in spite of physical disability is praiseworthy; her experiences in this regard may have given her valuable perspective, and have surely shaped her professional aspirations. We must, nevertheless, concern ourselves first and foremost with what the petitioner has achieved professionally, and therefore is likely to achieve in the future, rather than the personal circumstances under which the petitioner attained those accomplishments.

The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. 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. *Matter of New York State Dept. of Transportation* at 219. Therefore, the petitioner must do more than simply set forth ambitious plans; she must demonstrate that her past experience has equipped her to bring those plans to fruition.

The petitioner indicated that her past experience included work as a "legal advisor" to the Fotso Group in Cameroon, providing "legal advice on international law and international trade, manag[ing] special projects dealing with mergers and acquisitions"; as a "consultant" to the United Nations, providing "legal assistance to the department of human resources"; and as a "legal advisor" to Cameroon's mission to the United Nations, providing "legal advice pro bono to the mission concerning American laws and regulations, international law and especially international trade." The petitioner's initial submission contained little evidence of this past work apart from copies of the visas that have allowed her to work in the United States.

The petitioner submitted a number of witness letters, which generally amount to rather vague attestations regarding the petitioner's abilities. [REDACTED], now Lower School Head of Stevens Cooperative School, was "Academic Dean at the secondary school that [the petitioner] attended." He stated that the petitioner's "extensive experience in this country and the obstacles that she has been able to overcome speak volumes about her abilities."

[REDACTED] who was one of the petitioner's instructors at the University of North Carolina at Charlotte, stated that the petitioner "can bring to our American civilization a fresh point of view – a truly international blending of the African, French and American minds – that will be of immense value in the future."

Ambassador Tommo Monthe, identified as “Special Advisor, Office of the President of the 59<sup>th</sup> Session of the General Assembly of the United Nations,” stated:

[The petitioner] is an outstanding expert in international law. She has worked for the United Nations and has provided it with a much needed perspective on how to adapt to the challenges of globalization and how to resolve the issues it presents. . . . She possesses an understanding of issues which are important for the international community.

President of the Fotso Group, stated that the petitioner “will be a critical link in the United States for the FOTSO Group’s effort to find new partners.” Although he did not mention it in his letter, the record shows that [REDACTED] is the petitioner’s father.

Ambassador M. Chungong Ayafor, Deputy Permanent Representative of Cameroon to the United Nations, acknowledged the petitioner’s “voluntary and valuable services” and stated: “We were greatly impressed by her interest and insight on issues of International concern as well as by her pertinent perspectives on possibilities for promoting political and economic relations and cooperation between African countries and the United States.”

The most prominent witness is Kofi A. Annan, who at the time of filing was Secretary General of the United Nations. His undated letter is even more vague and general than Ambassador Ayafor’s letter; the most relevant portion of the letter credited the petitioner with “significant insights on a vast numbers [*sic*] of issues coupled with an enthusiasm to serve which makes her a very good candidate for job opportunities in her area of specialisation and related fields.”

The letters described above contained general praise for the petitioner’s abilities, but no specific information about the petitioner’s planned future work or what she has already accomplished that would help to achieve her larger goals.

On February 8, 2007, the director issued a request for evidence, instructing the petitioner to submit additional information about her intended work, supported by documentary evidence. In response, the petitioner stated:

I will work with American companies such as United Parcel Services Cameroon, which seek to expand and to thrive within Cameroonian and central African markets by providing them with the legal and international expertise needed to accomplish their objectives. Finally, I will continue to work with high-level government officials . . . by continuing to advocate for the strengthening of ties between Cameroon and the United States and by defending the interests of American firms and businesses. As both an attorney and an international affairs specialist, my aim would be to help American companies and organizations understand the context within which they evolve. . . .

Cameroon is at the center of the Central African region, which is rich in oil and other natural resources. It is the only country of this important region, which has English as one of its

national languages and which has been politically and economically stable. Thus, it is of critical importance to the national interest of the United States. . . .

I will help the United States and its organizations and firms gain a competitive advantage in Cameroon and in Central Africa. . . . I know the United States and Cameroonian legal, political, business and social environments. . . .

I have had several accomplishments, which have had an important and positive impact on the field by making a critical difference for different clients by enabling them to compete and to adapt to the Cameroonian and central African context.

The petitioner submitted three additional letters. The petitioner stated that two of these letters are from “American Companies,” but one of them, AMEX International, Inc., is a company based in Guinea, with a “U.S. Branch Office” in Washington.

[REDACTED], President of AMEX International, stated that the petitioner “provides invaluable insights on data which are necessary to understand both the American and African contexts and their complexities,” and that her value lies in her familiarity with both American and Cameroonian culture. Yves-Lionel Ngounou, General Manager of United Parcel Service (UPS) Cameroon, stated that the petitioner “has been a unique and critical asset in our expansion in Cameroon because of her vast knowledge of American corporate law, international business, and her mastery of the Francophone legal investment environment.” These letters demonstrate that the petitioner is qualified to conduct business that requires knowledge of cultural and business practices in Central Africa, but it does not follow that the petitioner presumptively qualifies for the waiver. The petitioner must distinguish herself from others in her field, rather than simply demonstrate that her occupation exhibits useful traits.

Réné Sadi, Minister, Deputy Secretary General of the Presidency of the Republic of Cameroon, stated that the petitioner “has made significant contributions to the rapprochement between Cameroon and the United States and to the multiplication of business contacts with American Corporations.” This statement, like many others in the record, is vague and general and offers no concrete basis by which to compare the petitioner to others who seek to facilitate international trade.

None of the witnesses said anything about “the integration of the disabled into the economy,” which the petitioner had earlier described as the “focus” of her efforts. The petitioner herself, in her accompanying statement, did not mention this goal either, largely avoiding the topic of disability except to assert that “to have a disabled Black woman represent the interests of American organizations and firms” would have symbolic value.

The director denied the petition on May 19, 2007, stating that the petitioner had submitted “no evidence to establish that the petitioner has had any degree of influence on the field as a whole.” On appeal, the petitioner, describing herself in the third person, states that her “education and experience make her one of the few persons to combine knowledge of the Cameroonian and Central African’s business and governmental African [*sic*] with an understanding of American law, Cameroonian, Central African, and International law.”

The director, in denying the petition, did not dispute the petitioner's knowledge of American and Cameroonian law. Nevertheless, simply possessing specialized knowledge or training does not qualify an alien for the national interest waiver, because such knowledge or training could be articulated on an application for labor certification. *See Matter of New York State Dept. of Transportation* at 221. There is no particular skill, talent, or expertise that is so valuable that an alien so endowed presumptively qualifies for the waiver. Furthermore, an alien's familiarity with her native country or region is to be expected; it is not a hallmark of special talent deserving of additional immigration benefits.

The petitioner states: "The employment the petitioner sought is not one of attorney as the Director of Nebraska Service Center concluded, but one, which involves her expertise in the field of international trade, business law, and international development rights especially as they relate to Central Africa and to Cameroon." Twice on the Form I-140 petition, once under "Occupation" and once under "Job Title," the petitioner identified herself as an "ATTORNEY" in all capital letters. The petitioner also emphasized her bar membership and other legal credentials. The director's reference to the petitioner as an "attorney," therefore, does not appear to denote error or carelessness on the director's part. Furthermore, her eligibility for the underlying immigrant classification rests on her status as an attorney, as the petitioner herself previously stipulated when she stated: "I am an attorney and as such, I am a member of a profession holding an advanced degree." If, as she now claims, the petitioner seeks employment as something other than an attorney, then her legal credentials are irrelevant and cannot qualify her for the classification sought. The burden is on the petitioner to show not only that she holds an advanced degree, but that her intended occupation falls under the regulatory definition of a "profession" at 8 C.F.R. § 204.5(k)(2).

The petitioner states that the previously submitted witness letters "established that the community recognizes the unusual and great significance of the petitioner's work," but, as we have already discussed, many of these letters are quite vague, and letters from individual clients establish little except that the petitioner has been helpful with their own successful ventures. The AAO acknowledges the high rank of some of the petitioner's witnesses, but the significance of their ranks does not oblige us to overlook the actual content of their letters.

The petitioner contends that the director did not give sufficient consideration to her "relationship with key officials" in the government of Cameroon. We acknowledge the petitioner's high-level contacts, although it is not clear whether she has these contacts "because of her extensive experience," as she contends, or because her father "owns [one] of the biggest banking group[s] of Central Africa." It remains that the documentary evidence which the petitioner has chosen to make available does not objectively demonstrate that she has been a particularly influential figure in strengthening legal or commercial ties between the United States and Cameroon.

The petitioner asserts that "the labor certification process is inapplicable" because she "intends to be self-employed." We acknowledge that there are certain occupations wherein individuals are essentially self-employed, and thus would have no U.S. employer to apply for a labor certification. While this fact will be given due consideration in appropriate cases, 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. *Matter of New York State Dept. of Transportation* at 218, n.5.

The petitioner states:

Finally, there is an issue in this case of fundamental fairness. . . .

The petitioner has lived in the United States for almost 14 years. In spite of her physical disability, she has been able to receive a great education . . . while doing extensive volunteer work for the premier transnational group of Cameroon and of Central Africa and while advising the Cameroonian government. . . . One of the essential questions of this case is: if a physically disabled young woman with the background of the petitioner and her extensive work does not embody American values and ideals by her perseverance and her willingness to work against all odds does not deserve to have a petition granted . . . than what are the value of effort, merit, and achievement?

(*Sic.*) The petitioner correctly acknowledges that nothing in the statute, regulations, or case law “made fundamental fairness a factor in evaluating the petition.” Significantly, the petitioner offers no persuasive argument that “fundamental fairness” requires approval of the petition. The petitioner does not explain why it would be fundamentally fair to look favorably on the petition because she is “a physically disabled young woman” as opposed to, say, an able-bodied older man. Preferential consideration based on any factor other than the petitioner’s professional accomplishments would not be “fundamental fairness,” but rather the opposite thereof.

The petitioner’s assertion that the United States should “show that it rewards courage, effort, and merit” does not force the conclusion that such “rewards” should take the form of the national interest waiver. The petitioner’s argument that approval of the waiver would have symbolic or propaganda value as an inspirational illustration of American values is duly noted, but we are not persuaded thereby. We must be guided by a given alien’s accomplishments, rather than adversities that the alien may have struggled to overcome.

The petitioner submits documentation showing that she established a limited liability company in the District of Columbia on December 5, 2005. This company did not exist when she filed the petition on October 20, 2005. The beneficiary of an immigrant visa petition must be eligible at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Therefore, a petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Commr. 1998). Even notwithstanding the above case law, the record is silent as to what, if anything, the petitioner’s company has accomplished between its 2005 inception and the filing of the appeal a year and a half later.

The petitioner has established that she has produced satisfactory results for particular clients, which demonstrates professional competence, and that she has connections with the government of Cameroon,

which may give her an advantage in certain situations. The petitioner has not, however, demonstrated objectively that she, as an individual, has had a significant or lasting impact on relations between the United States and Cameroon and its neighboring countries.

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.