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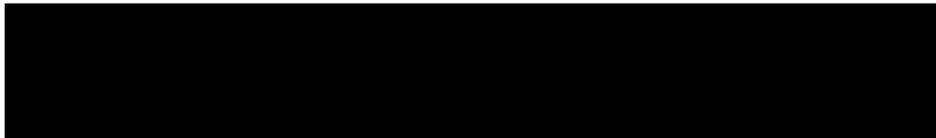
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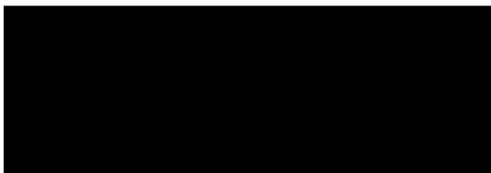
Date **AUG 08 2008**

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:



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 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 an alien of exceptional ability in the sciences. The petitioner seeks to employ the beneficiary as a hospitalist. 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 record readily establishes that the beneficiary qualifies as a member of the professions holding an advanced degree. Although the petitioner sought to classify the beneficiary as an alien of exceptional ability in the sciences, such a finding would be without effect with respect to the outcome of the appeal. 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 described the beneficiary as “one of the frontrunners in the establishment of the newly created specialty of hospitalist.” Counsel stated that the beneficiary has earned “acclaim from [her] colleagues.” As evidence of this asserted acclaim, the petitioner submitted letters from seven individuals, all of whom are employed by Johns Hopkins University (JHU). We shall consider examples of these letters below.

██████████ is an assistant professor at the petitioning institution and Director of the petitioner’s Collaborative Inpatient Medicine Service, as well as Chairman of the Leadership Committee of the Society of Hospital Medicine. ██████████ stated:

Of the numerous medical students, residents in training, research fellows and faculty I had the pleasure to educate and mentor, [the beneficiary] is at the top of them all. I feel very strongly that [the beneficiary] is on the “fast track” to academic greatness. Of all the physicians I have supervised in my years as a faculty member, none were able to obtain grant funding faster, develop career paths with national (even international) impact sooner, and bring high quality research to fruition quicker than [the beneficiary]. . . . Her pioneering work on public health and hospital medicine, a field formerly unknown until [the beneficiary’s] work, has led to the recognition that hospital physicians have [a] major impact on such medical issues as bacterial antibiotic resistance and medical cost. . . .

[The beneficiary] is a master at managing a large number of hospitalized patients, and providing first-rate clinical care. And despite that busy schedule, [the beneficiary] has found time for writing book chapters, scientific papers and speaking on her areas of expertise.

Professor ██████████ stated:

The career trajectory that [the beneficiary] has developed is to delineate and promote, based entirely upon her original work, a public health role for hospitalist physicians in the United States. . . . Importantly, she has now completed a paper, unique in the field, which delineates the many aspects of hospitalist-care of patients that have public health implications. The paper she has written will soon be published and available widely to hospitalists [*sic*] programs throughout the United States. . . .

[The beneficiary] brings outstanding potential for leading a national focus on the public health aspects of hospitalist medicine.

Professor ██████████ stated:

[The beneficiary] is one of the very small numbers of physicians serving as a hospitalist and has developed new clinical roles and responsibilities for this group of physicians. Over the past year, she has identified and developed a new role for these physicians; one of a public health role in which hospitalists perform important duties in terms of quality assurance, controlling hospital acquired infections, in public health.

Instructor ██████████ claimed that the beneficiary “is currently the only hospitalist in the United States who has merged the fields of hospital based practice and public health. . . . The impact of her article is expected to redefine and further expand the role of hospital medicine as we know it today.” As of the petition’s filing date, the “article” thus mentioned (of which ██████████ was a co-author) had been submitted for publication but not yet published. The petitioner’s initial submission identified three articles and one book chapter co-authored by the beneficiary. Of these four items, only two (one article and the book chapter) were published before the filing date. The two published items did not appear to pertain specifically to hospitalists.

In short, the letters do not establish that the beneficiary has had a significant impact among hospitalists. They establish only that members of the JHU faculty expect her eventually to have such an impact.

On May 23, 2007, the director issued a request for evidence, instructing the petitioner to “submit copies of any published articles by others citing or otherwise recognizing the beneficiary’s research and/or contributions.” The director also advised that the petitioner “must establish that the beneficiary has a past record of specific prior achievement that justifies projections of future benefit to the national interest.”

In response, counsel noted “the recently published Breakthrough Magazine, a publication by the Johns Hopkins Center for Innovative Medicine. This first issue features [the beneficiary] and her unique

contribution to national health in the article entitled *Antibiotics: Less is More, Smarter is Better*.” That article credited the beneficiary with “what may well be the first public health project done by hospitalists.” As counsel noted, *Breakthrough* is a JHU publication and, as such, the article does not demonstrate the beneficiary’s existing impact outside of the petitioning institution.

The petitioner submits nine additional witness letters. Most of the witnesses are current or former JHU faculty members, and all of the witnesses have demonstrable ties to the beneficiary through her studies or her employment. These letters, like the first group of letters, contain strong praise for the beneficiary’s abilities and for her attempts to integrate public health and hospital medicine, but they do not demonstrate that her work has had any significant impact outside of the petitioning organization and other places where the beneficiary has worked or studied.

The director denied the petition on October 6, 2007, acknowledging the intrinsic merit of the beneficiary’s work but finding that the petitioner had not established that the beneficiary’s work is national in scope, or that the beneficiary has had an impact within her field that distinguishes her from others in that field. The director noted that the beneficiary’s published work that related to hospital medicine appeared after the petition’s filing date, and therefore did not establish the beneficiary’s qualifications as of the date of filing.

On appeal, counsel observes that the research leading to the beneficiary’s published articles took place before the petition’s filing date. Counsel also lists the materials submitted previously and contends that “all of the submitted material is relevant to showing a national interest.”

Because the beneficiary has widely disseminated her work via journal publications, we withdraw the director’s finding that the beneficiary’s work lacks national scope. This is not to say, however, that the beneficiary’s work has thus far had a discernible national effect that would justify a waiver.

While it is true that the beneficiary had written her articles prior to the filing date, it is equally true that the record fails to document significant interest in the beneficiary’s work, let alone implementation of her ideas, outside of JHU and other entities where the beneficiary has worked or studied. The only publication shown to reference the beneficiary’s work is a self-serving JHU promotional publication.

Witnesses have asserted that the beneficiary will revolutionize her field by involving hospitalists more thoroughly in public health issues, but expectations alone cannot justify a national interest waiver. Absent concrete evidence that independent hospitals have begun implementing the beneficiary’s programs, witnesses’ expectations are little more than speculation. These expectations may, one day, prove to be entirely justified as the beneficiary’s work bears fruit, but a waiver request at this early date is, at best, premature.

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.