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U.S. Citizenship  
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUN 14 2005  
WAC 03 214 50137

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office 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 a member of the professions holding an advanced degree. The petitioner is a nonprofit social service organization that seeks to employ the beneficiary as a senior housing development manager. 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 beneficiary 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 director of housing development, discusses the petitioner's work and explains why he believes that the beneficiary qualifies for a national interest waiver:

[The beneficiary's] expertise in low-income housing is critical to our ability to address the needs of San Francisco's homeless population through housing and social services. Her unique talents rise from her expertise and experience in public administration, provision of social services and architectural design, which combine to make her an alien of extraordinary ability, meriting a national interest waiver. . . .

[The petitioner] houses 3,000 San Franciscans, primarily people who earn \$5,000 to \$25,000 a year. . . . [The petitioner] is one of the leaders throughout the State of California in addressing homelessness and housing people at risk of becoming homeless. . . .

We design and maintain "service enriched" affordable housing for our residents. . . . Our services include in-house social workers who counsel individuals and families, an employment and job training program with placement assistance and an after school program. . . .

Fulfilling [the petitioner's] mission requires the organization to assume a staggering degree of real estate risk - any given project has the potential to outstrip [the petitioner's] assets and threaten its existence. [The beneficiary's] involvement in bringing these projects to fruition, within budget and on schedule, will be critical, not only to meeting the important goal of producing affordable housing in the nation's most expensive housing market, but also in protecting [the petitioner] financially and enabling it to continue to meet its mission.

asserts that several ongoing development projects cannot continue without the beneficiary's involvement. Arguing that the beneficiary's work is of national benefit, rather than merely local benefit to some areas of San Francisco, states that the beneficiary "has contributed to national panel discussions on how to address the national housing shortage and on how to best provide affordable support services low-income housing. These events are attended by professionals from across the United States, involved with the National crisis of low-income housing and support services." lists nine events in

an effort to establish the national impact of the beneficiary's work, but many of the listed events are, themselves, local in nature, such as a conference involving the California State Legislature and a staff award that the petitioning organization awarded to the beneficiary. Below are the instances listed by [REDACTED] are, facially, plausibly national in scope:

- In 2002, [the beneficiary] facilitated and organized a panel for the Non-Profit Housing Association Conference: "License to Build," entitled the "Negotiated Construction Contract Process." She also created and prepared the voluminous training manual for that panel. Housing advocates from across the nation attended this conference.
- In 2001, [the beneficiary] was a speaker at the National MBA Conference, on "Careers in Non-Profits: Affordable Housing Development."
- In 1998, [the beneficiary] was the host and a presenter at the Immigrant and Refugee Services of America Conference, where the special focus was "Integrating Mental Health Services into Programs for Immigrant and Refugee families."

The 1998 event, which took place at the beneficiary's graduate *alma mater* when the beneficiary worked for an immigrant/refugee advocacy group, does not appear to relate directly to the beneficiary's current field. The record does not appear to contain any evidence at all regarding the claimed 2001 conference. With regard to the 2002 conference, the record shows that the full name of the sponsoring entity is the Non-Profit Housing Association of *Northern California*. The brochure for the conference bears the legend: "It starts with a vision - A decent, safe, and affordable home for everyone in Northern California." The full name of the conference was "Bond: License to Build," and a goal of the conference was to support passage of Proposition 46, a California bond initiative to finance housing programs. None of the materials pertaining to the conference indicate that the event was national as the petitioner now claims. Rather, the documentation consistently indicates that the conference concerned *local* issues.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988).

CIS may approve a petition only upon a finding that all of the facts claimed in the petition are true. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

[REDACTED] observes that reducing homelessness is a national goal, and that the petitioner's projects receive funding from the United States Department of Housing and Urban Development (HUD). [REDACTED] "HUD is looking for models of urban development which can be used all over the United States. [The beneficiary] is providing this." This assertion would carry a great deal of weight if it were supported by statements from national-level HUD officials and/or other evidence that HUD has taken notice of the beneficiary's work at the national level (rather than at the local field office level). As it stands, the petitioner's assertion that her work *could* be implemented nationally is unsubstantiated and conjectural. The petitioner submits background information about supportive housing, in which social services are provided alongside basic housing, but there is no independent evidence to establish that the beneficiary is the originator of the supportive housing concept (as opposed to an early advocate of the principle).

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. *Matter of New York State Dept. of Transportation* at 215. In this instance, we note that the beneficiary first began working with low-income housing in New York in the late 1980s. Therefore, as of 2003, when the petition was filed, the beneficiary had had over a decade for her work to have a noticeable impact outside of the specific locations where she has worked.

The petitioner has submitted several witness letters. Employers, area architects, and public officials in and around San Francisco state that the beneficiary has played an indispensable role in getting low-cost housing projects built or refurbished. The beneficiary's former employers in New York and London praise her skills on specific building projects in those two cities. Witnesses in San Francisco, and the beneficiary's personal associates in other cities, assert that the beneficiary has had a broader impact. For instance, [REDACTED] a former architect (now a fashion designer) in New York who studied alongside the beneficiary at [REDACTED] states that the petitioning organization's combination of social services and architectural design "has become an award-winning model for other low-income housing agencies." San Francisco architect [REDACTED] states that the beneficiary "is indispensable to the critical work we are doing in support of low income housing in San Francisco, and to our ability to share the results of our successful model with other cities in the United States." The record, however, is devoid of documentation showing that any other cities *have*, in fact, adopted any model developed by the beneficiary, or have given serious consideration to doing so. Assertions from the beneficiary's collaborators and friends, to the effect that unnamed "other cities" rely on these models, cannot suffice in this regard.

[REDACTED] a planning commissioner in San Anselmo, California, states:

In my unique position as an affordable housing development consultant I am often contracted to assist San Francisco nonprofit development corporations. The principal reason my services are needed by these local corporations is due to the lack of more experienced senior level housing development managers. I can confirm that there is a serious and overwhelming need for individuals with the education, background, and experience of [the beneficiary]. . . .

Hiring and retaining highly educated, experienced, and devoted housing development managers is highly problematic. The basic fact is that often an individual with the education, experience and wisdom of age, frequently chooses to pursue employment in an area of housing or real estate development which offers a more agreeable work load and a significantly higher level of pay. As a result of this phenomenon, individuals with the education, experience and wisdom of age are rare, and desperately needed.

It is not clear from the above letter whether there is an overall local shortage of senior housing development managers, or whether the shortage is only among the most experienced such managers.

The director instructed the petitioner to submit "evidence that the benefits of the alien's proposed employment will be **national** in scope" (director's emphasis). In response, the petitioner submits six letters "from Recognized NATIONAL Organizations and Recognized Experts in the field." Five of the six letters are from witnesses in or near San Francisco.

[REDACTED] where the petitioner carried her Master of Business Administration degree, states that the beneficiary's work for the petitioner "provides a model for solving problems of the homeless that has been and will continue to be reproduced in urban centers all over the country." Prof. Miller cites no named examples. He observes that the beneficiary "worked on Valley Lodge, a novel housing project for homeless seniors in New York City," but the beneficiary was working in New York at the time and therefore this is simply an earlier example of the local impact that would be expected of a worker in her position.

[REDACTED] is a former chair of the National Adult Day Services Association. She is now the director of External Affairs for the Institute on Aging, a San Francisco organization whose motto is "Helping Bay Area Seniors Live Independently." [REDACTED] states that the beneficiary's current projects "will be used as models for affordable housing for seniors around the United States." [REDACTED] president and CEO of the Corporation for Supportive Housing in Oakland, California, refers to one of the beneficiary's projects and states: "It is expected that this building project will be a model that can be replicated in the City of San Francisco and other cities in the United States." [REDACTED] senior program director at the San Francisco office of the Local Initiatives Support Corporation, states that the beneficiary's "innovative models are being applied not only in San Francisco but nationwide." None of these witnesses specify *by whom* the beneficiary's models purportedly are being, or will be, used. If the petitioner seeks to demonstrate national implementation of the beneficiary's models, it simply cannot suffice to provide letters from witnesses in the beneficiary's immediate geographic area, who assert, using passive verbs without subjects, that the beneficiary's ideas "are being" or "will be" implemented by anonymous "others."

[REDACTED] California Acquisitions Manager at the San Francisco office of the Enterprise Social Investment Corporation, states that the beneficiary "has just created a brilliant new financial model that . . . will be used as a national model" (emphasis in original). The financial model involves "a beneficial tax break." Because the beneficiary is not in a position to provide tax breaks, this element of the beneficiary's plan clearly requires the cooperation of government authorities to implement these tax breaks. He adds that the beneficiary "has developed several innovative affordable housing models and practices. The Enterprise Foundation is disseminating her models and ideas to housing advocates in communities nationwide via our technical support network." The record contains no documentary evidence to establish the breadth, extent, or nature of this dissemination, or to show that other areas are, in fact, implementing these models.

The only witness outside of northern California is Maryland attorney [REDACTED] states without elaboration that the beneficiary is "an innovator in providing models for affordable housing that can be utilized in urban settings throughout the United States," and that the beneficiary's work "continues to have national impact." She states that the beneficiary "has created housing models that are being used nationally," but proves no more able than the other witnesses even to identify, much less document, widespread implementation of these models.

[REDACTED] a statement submitted with the above letters, states:

The Department of Human Services [sic; the actual name is Department of Health and Human Services] has chosen [the petitioner] to develop an affordable housing complex for seniors currently in the city's homeless shelters. . . . We were awarded that contract due in large part to [the beneficiary]. DHS knew that [the beneficiary] actually designed the first senior housing project ever in the United States. **DHS specifically requested that [the beneficiary] manage this project.** The DHS intends this housing project to serve as a model for other projects around the United States.

(Emphasis in original.) The petitioner submits no evidence to support any of these claims. Given the inaccuracies and omissions in Mr. Falk's prior statements, we cannot accept his uncorroborated assertions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The director denied the petition, stating that the petitioner has not established the national scope of the beneficiary's work, or that the beneficiary's work represents so great a prospective national benefit that it would be in the national interest to waive the job offer/labor certification requirement that normally attaches to the immigrant classification that the petitioner has chosen to seek on the beneficiary's behalf. The director acknowledged the overall importance of the beneficiary's field of endeavor, but concluded that the beneficiary's own contributions are local in nature, and thus are greatly attenuated at the national level.

On appeal, counsel argues "the CIS determined that because the employer's name includes the word 'Neighborhood' that [the beneficiary's] impact cannot be national in scope." The director did not arise at this determination because of the petitioner's name, but rather because by its very nature, the petitioning entity's direct work is limited to a part of San Francisco. [REDACTED] previously, the petitioner's purpose is "to address the needs of San Francisco's homeless population." The petitioner's name is immaterial, and the assertion that the director "makes no analysis of [the petitioner's] contribution to the housing field, instead relying solely on their name," is an inaccurate, if not disingenuous, reading of the decision. The director cited the petitioner's name not because the name itself is a disqualifying factor, but because that name quite accurately reflects the documented fact that the petitioner's activities are limited to a neighborhood in San Francisco. While counsel condemns this finding by the director, counsel makes no attempt whatsoever to show that the petitioning entity does, in fact, directly engage in similar projects outside of that one city.

Counsel alleges that the director "failed to consider a New York Times article, HUD memos and publications and other objective evidence." Most of the documents cited address the general issue of low-cost housing. The *New York Times* article is a two-sentence piece about the opening of Valley Lodge, a center that the beneficiary was involved with building when she worked in New York. The record is entirely devoid of "objective evidence" to show that the petitioner has had a significant impact outside of specific projects on which she has worked.

Counsel observes that five witness letters "were from persons who had never met or worked with Beneficiary, and were familiar with her work via reputation." Four of these witnesses, as discussed earlier, are based in [REDACTED]. The fifth [REDACTED] offers no useful information about how she came to know about the beneficiary's work, stating only that she has read about it (she does not say where).

Counsel claims that the beneficiary "designed the first support services housing project in the United States (for New York City), followed as a national model for affordable housing." As evidence to support this claim, counsel cites "Initial Exhibits 15, 16." Exhibit 15 consists of two newspaper articles about the 1988 opening of Valley Lodge. Exhibit 16 is a copy of the program from Valley Lodge's opening ceremony. The articles do not mention the beneficiary at all; the program states only that the beneficiary provided "Architectural Supervisory services." The documents do not mention that Valley Lodge is the first supportive housing project in the United States. Indeed, the program reads, in part: "Valley Lodge is the latest of the projects of the West Side Federation for Senior Housing. WSFSH is committed to the development of low-income supportive housing for older people, the homeless, and the handicapped." This wording at least implies that the concept of supportive housing predates Valley Lodge, and that Valley Lodge was not even the

first supportive housing project for WSFSH, let alone the United States. Certainly, there is nothing in the documentation that even remotely implies that the beneficiary is responsible for the original concept of supportive housing. Counsel's claim is, therefore, entirely without evidentiary support.

Counsel repeats [REDACTED] earlier assertion that the beneficiary participated in numerous national conferences. Among the so-called "national" conferences, counsel lists "the Non-Profit Housing Association Conference." As discussed above, the stated goal of this conference was "A decent, safe and affordable home for everyone in Northern California." It is evident that we can place no credence in counsel's factual assertions.

When a petition rests largely on testimonial claims rather than on documentary evidence, as is the case here, the credibility, reliability, and consistency of the testimonial claims is of paramount importance. Because of the credibility issues discussed elsewhere in this decision, we cannot place significant weight on unsupported assertions. While the record does contain objective evidence from various sources, this objective evidence does not demonstrate that the beneficiary has been, or is likely to be, more important than others in her field to the national goal of improving housing conditions for the poor. The preponderance of the available documentation indicates that the beneficiary's reputation is largely, if not entirely, confined to the San Francisco Bay Area and other locales where she has worked in the past. Assertions regarding her wider impact are either unacceptably vague or else demonstrably exaggerated. We therefore affirm the director's finding that the beneficiary's impact has been, and will likely continue to be, primarily local in scope.

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.