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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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JAN 2 2 2010

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date:
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IN RE: Petitioner:
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:

[redacted]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which 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 an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks to employ the beneficiary as a social worker. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the beneficiary qualifies for classification as an alien of exceptional ability or a member of the professions holding an advanced degree, but that the beneficiary had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

At that outset, we note that it is not clear that the beneficiary is currently qualified to work in this occupation, however, as the Department of Labor's Occupational Outlook Handbook (OOH), accessed at http://www.bls.gov/oco/ocos060.htm on December 17, 2009 and incorporated into the record of proceedings, indicates that all states require social workers to be licensed and the record contains no evidence that the petitioner has such a license. In her initial letter, the petitioner's [redacted], acknowledges that all social workers must be licensed, but asserts that the proposed employment does not require licensure because it "does not involve clinical social work." First, [redacted] does not provide any support for the assertion that social workers not engaged in clinical work need not be licensed. Moreover, one of the beneficiary's proposed duties includes providing "appropriate counseling to clients and families." The petitioner does not explain why this duty is not "clinical." Therefore, in addition to the remaining discussion regarding the beneficiary's ineligibility, the beneficiary's licensure is an issue that would need to be overcome in any future filing.

On appeal, counsel submits a brief and resubmits previously submitted evidence. For the reasons discussed below, we uphold the director's decision based both on the intrinsically local nature of the beneficiary's occupation and due to the complete lack of any evidence of the beneficiary's experience, let alone success, launching the type of national model program envisioned in this matter. Moreover, we withdraw the director's conclusion that the petitioner has established that the beneficiary qualifies for the classification sought. For the reasons discussed below, the record lacks evidence that the beneficiary possesses an advanced degree or equivalent as defined at 8 C.F.R. § 204.5(k)(2) and evidence conforming to the regulatory requirements for an alien of exceptional ability set forth at 8 C.F.R. § 204.5(k)(3)(ii). Finally, it is noted that the record lacks the uncertified Form ETA 750B required for the benefit sought, 8 C.F.R. § 204.5(k)(4)(ii), or the newer ETA Form 9089, Part J.

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.

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree.

Initially, counsel asserted that the beneficiary "is a university graduate who possesses a university degree in the applicable professional discipline" and "qualifies as a member of the professions as that term is defined at Section 101(a)(32) of the Immigration and Nationality Act." We do not contest that the beneficiary's *proposed* occupation, social worker, falls within the pertinent regulatory definition of a profession. Members of the professions without an advanced degree, however, qualify only for the lesser classification set forth at section 203(b)(3)(ii) of the Act, a classification that does not allow for a waiver of the alien employment certification in the national interest. Thus, at issue is whether the beneficiary holds an advanced degree as defined at 8 C.F.R. § 204.5(k)(2).

The beneficiary holds a baccalaureate degree in Social Work from Centro Escolar University in the Philippines dated October 12, 1977. The record contains an evaluation from Global Education Group equating this degree to a baccalaureate degree in Social Work in the United States. As stated above, the petitioner did not submit an uncertified Form ETA 750B as required under 8 C.F.R. § 204.5(k)(4)(ii) or an ETA Form 9089, Part J, which would have listed the beneficiary's experience. Rather, the petitioner submitted the beneficiary's self-serving resume that lists no experience after 2002. This self-serving document cannot even establish the beneficiary's alleged employment prior to 2002. Specifically, the regulation at 8 C.F.R. § 204.5(g)(1) requires that evidence of employment consist of letters from current or former employers. Moreover, 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'r. 1998) (citing *Matter of Treasure Craft of* California, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)). Regardless, the beneficiary lists experience as a day care worker at Quezon City Hall for an unspecified period, as a grade school teacher and as a parish secretary, none of which falls within the proposed field of social work. The beneficiary also lists no more than two years of experience as a "Social Welfare Aid/Day Care Worker" for the Municipal Social Welfare Development Office in Valenzuela City, Philippines. Even if the petitioner had documented this experience, it falls short of the five years progressive experience in the field of social work required for equivalency to an advanced degree. 8 C.F.R. § 204.5(k)(2).

The petitioner is the only employer to provide a letter supporting the petition. the petitioner's President and Administrator, does not indicate the beneficiary's dates of employment with the petitioner. We note that the petitioner submitted the approval notice for the petitioner's nonimmigrant petition in behalf of the beneficiary, which is dated February 14, 2006. This document does not establish that the beneficiary had five years of experience in the field of social work as of April 14, 2008, the filing date of the petition before us.

In light of the above, while the beneficiary received her baccalaureate in 1977, more than 30 years before the petition was filed, the petitioner has not provided the required initial evidence necessary to document the beneficiary's post-baccalaureate progressive experience in the field. Thus, the record does not establish that the beneficiary is a member of the professions holding an advanced degree or its equivalent as defined at 8 C.F.R. § 204.5(k)(2).

Section 203(b)(2) of the Act also includes a classification for aliens of exceptional ability. Neither counsel nor the petitioner has ever claimed that the beneficiary qualifies as an alien of exceptional ability. Nevertheless, we will briefly address this classification as the beneficiary does not qualify as a member of the professions holding an advanced degree.

The regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth six criteria, at least three of which an alien must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business. These criteria follow below. The regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered." Therefore, evidence submitted to establish exceptional ability must somehow place the alien above others in the field in order to fulfill the criteria below; qualifications possessed by every member of a given field cannot demonstrate "a degree of expertise significantly above that ordinarily encountered." The criteria at 8 C.F.R. § 204.5(k)(3)(ii) are as follows:

(A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability.

(B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought.

(C) A license to practice the profession or certification for a particular profession or occupation.

(D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability.

(E) Evidence of membership in professional associations.

(F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

The only evidence relating to any of these criteria is the beneficiary's baccalaureate. Section 203(b)(2)(C) of the Act provides that the possession of a degree, diploma, certificate or similar award from a college, university school or other institution of learning shall not by itself be considered sufficient evidence of exceptional ability. The petitioner has not established that a baccalaureate degree in Social Work is indicative of or consistent with a degree of expertise significantly above that ordinarily encountered in the field. Rather, acknowledges that a baccalaureate is the minimum education for the occupation. Regardless, the regulation at 8 C.F.R. § 204.5(k)(3)(ii) requires evidence relating to three of the above criteria. The petitioner has only submitted evidence relating to one. Thus, the petitioner has not established that the beneficiary is an alien of exceptional ability.

As the petitioner has not demonstrated that the beneficiary is either a member of the professions holding an advanced degree or an alien of exceptional ability, the issue of whether waiving the job offer requirement is in the national interest is moot. Nevertheless, we will address this issue as it was the sole basis of the director's decision.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "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).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service 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 Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), 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. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* 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. *Id.* at 217-18.

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. *Id.* at 219. 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. *Id.*

The intrinsic merit of social work is not at issue in this proceeding. The director then concluded that the proposed benefits of the beneficiary's work, involvement in the petitioner's Community Care Licensing (CCL) program for developmentally disabled individuals needing basic care and supervision, would not be national in scope. Throughout the proceeding counsel has asserted that the program will serve as a national model. The petitioner initially asserted that community based programs "do not initially take root" but speculated that if the beneficiary's program succeeds, "our model will be expanded and shared to [sic] any community states and regions."

In addressing this issue, *NYSDOT* states:

> [T]he analysis we follow in "national interest" cases under section 203(b)(2)(B) of the Act differs from that for standard "exceptional ability" cases under section 203(b)(2)(A) of the Act. In the latter type of case, the local labor market is considered through the labor certification process and the activity performed by the alien need not have a national effect. For instance, 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. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

22 I&N Dec. at 217, n.3

As with providing community services for the developmentally disabled, legal services for those without financial means, education and nutrition are all areas that are important at the national level. The above footnote makes clear, however, that the national importance of the issue is insufficient. The question is whether the activity inherent to the proposed occupation would result in benefits that are discernible at the national level. Significantly, it is not enough to conceive of a means whereby the beneficiary's work could eventually have a national impact. To hold otherwise would render the national scope requirement meaningless. Rather, the petitioner must demonstrate that the proposed employment is within a framework that typically has such an impact, such as the alien in *NYSDOT*, who worked on the proper maintenance of bridges and roads already connected to the national transportation system. 22 I&N Dec. at 217.

The proposed employment is as a social worker working for a single CCL office that is not already looked to as a national model as opposed to working for a national consulting service for communities wishing to follow such a model. As such, we concur with the director that the proposed employment would not produce benefits that are national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Much of the record documents the increasing need for social workers to care for the elderly, the shortage of social workers in California, the importance of community care for the developmentally disabled and California's regulation of the industry. Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Id.* at 218.

At issue is whether this beneficiary's contributions in the field are of such unusual significance that the beneficiary merits the special benefit of a national interest waiver, over and above the visa classification she seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate the beneficiary's past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. [redacted] has stated that the beneficiary has made a difference in the lives of the petitioner's clients, stating more specifically that the beneficiary's advocacy on behalf of the petitioner's clients resulted in a 15 percent increase in the percentage of the petitioner's clients actively participating in work support programs. [redacted] does not indicate whether this increase occurred because the beneficiary took a new position or replaced a previous social worker. Ultimately, [redacted] does not explain how the beneficiary's advocacy of the petitioner's clients sets the beneficiary apart from any other qualified social worker.

does not suggest that the beneficiary has a successful track record with a degree of influence on the field as a whole, such as having developed novel social work methodologies that are being applied or even reviewed nationwide. certainly does not suggest that the beneficiary has any experience, let along success, establishing a national model program.

We recognize that the director's request for additional evidence, worded as if the beneficiary had self-petitioned, mistakenly implied that the petitioner needed to submit evidence of its own accomplishments rather than those of the beneficiary. Thus, subsequent letter addresses her own successes. The director's final decision, however, while continuing to reference the beneficiary as a self-petitioner, makes clear that the record lacks evidence of the *beneficiary's* accomplishments in the field. Counsel's brief, while recognizing that the director mistakenly identified the beneficiary as the self-petitioner, provides no new insights or evidence regarding the beneficiary's past record.

The record contains no evidence that the beneficiary has any experience creating the type of model program envisioned by the petitioner. Rather, she has, at best, teaching and social work experience potentially qualifying her for a job as a social worker should she obtain a license. Nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process. *Id.* at 223. In a similar vein, we are not persuaded that the national interest waiver was intended as a means for employers to qualify a beneficiary who otherwise qualifies for classification as a professional pursuant to section 203(b)(3) of the Act for a higher classification pursuant to section 203(b)(2).

Finally, we note that alleges:

> **Labor certification process not viable option at this time, and redundant:** In fact, [the beneficiary] has not initiated an individual labor certification before this date. Due to the forces of 9/11, the Homeland Security reorganization resulted in hundreds of thousands of employment based immigrant visas vanishing from the system. Our program and this beneficiary now suffer, as no visas remain available to complete an immigrant process now after three (3) years in queue. This renders the system useless in meeting the needs for permanent immigrant benefits within the time deemed rational to most employers and workers.

This assertion is ill-defined and unsubstantiated. Congress, not U.S. Citizenship and Immigration Services (USCIS) or the Department of Homeland Security (DHS), sets numerical and country limits for employment based immigration. Sections 201(d) and 202 of the Act. The petitioner does not assert that these sections were amended after September 11, 2001. does not assert that the beneficiary's has an approved employment based petition that "vanished." In fact, acknowledges that no visa petition was previously filed in the beneficiary's behalf. We reiterate that nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification

process, which includes waiting for visas to become available in the classification for which an alien is eligible. *See id.* at 223.

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 alien employment 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 an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.