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U.S. Citizenship and Immigration Services

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date:
SRC 09 013 51678

APR 22 2010

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.

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 employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

This petition, filed on October 20, 2008, seeks to classify the petitioner 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. Since 2003, the petitioner has been working as a freelance psychologist for the Dutch Institute for Forensic Psychology and Psychiatry in the Netherlands evaluating "juvenile delinquents for court." 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.

On appeal, counsel argues that the petitioner will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. Counsel also states that the director denied the petition without issuing a request for evidence. The regulation at 8 C.F.R. § 103.2(b)(8)(ii) provides:

If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, USCIS [U.S. Citizenship and Immigration Services] in its discretion may deny the application or petition for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.

The director is not required to issue a request for further information in every potentially deniable case. If the director determines that the record lacks initial evidence or does not demonstrate eligibility, the cited regulation does not require solicitation of further documentation. With regard to counsel's concern, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has in fact supplemented the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence.

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 petitioner received her Master of Science degree in Psychology from Vrije University in the Netherlands in 1997. The director found 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 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 (November 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.*

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.

With regard to the first factor set forth in *NYS DOT*, we concur with the director's finding that the petitioner works in an area of intrinsic merit, psychology.

Regarding the second factor in *NYS DOT*, whether the proposed benefit of the petitioner's work will be national in scope, the petitioner submitted two letters from the Spirituality for Kids (SFK) organization discussing her prospective employment in the United States.

states:

Spirituality for Kids (SFK) was started in 2001 by [redacted] who saw that there were many at-risk families looking for quick fixes for problems they faced in their lives having to do with: drug abuse, child abuse, violence, crime, gang violence, high drop out rates, early pregnancy and more. The curriculum was created by SFK to help to provide these students and families the tools to make choices that would require harder work but would lead to a more fulfilling life where transformation was created positively in their lives and eventually in the world around them.

* * *

Programming is conducted during school, in an after school setting, during the summer and led by SFK Teachers, Facilitators, Administrators, Volunteers other community members.

* * *

In our search for a staff evaluator and instructor we have found [the petitioner's] qualifications to be unique among her peers

* * *

Currently we have not been able to find a psychologist[.] Her qualifications to work with our students would provide opportunities for growth that we have not yet provided in our program. With her profound psycho diagnostic skills, and training working with children and juveniles, and her experience training interns, health care professionals and volunteers, [the petitioner] would be able to start working as a teacher for SFK and advice [sic] us about possible improvements in the program. Once she has gone through this process she will be

able to train other potential teachers in the Miami area, where there are no trainers available yet and the program just started as part of the curriculum in the public school district of Dade County. This will help the program expand and reach more counties in Miami and other states, with the ultimate goal of reaching kids in the public schools across the country. . . . In addition, [the petitioner] is multi-lingual. With her multiple language skills she would be able to reach the diverse population in underdeveloped neighborhoods so they can benefit from SFK through community centers, and social services.

states:

In February of this year, we made a presentation before the biannual Opening of Schools meeting as well as smaller presentations with key members of the school board. Soon after, they were very excited to start curriculum-time programming with us in three classes in two different Miami-Dade County Public Schools in addition to our regularly large after-school programming of 11 classes in 10 different sites. The classes were a great success and we will be looking to starting at least six curriculum-time classes in at least 3 schools this fall. Together with our after-school programming, we are looking to reach at least 300 children for the fall and about 1000 over the school year.

There is a great need for resiliency among the at-risk children of South Florida. With our growth, we are looking to expand more and more throughout the Miami-Dade County Public School system and beyond into Broward County and all of South Florida.

Having considered [the petitioner's] resume, and taking into consideration her qualifications and experience as a child psychologist, we would be honored to have her as part of our team. Her international experience, her ability to speak four languages coupled with her knowledge of different cultures will greatly contribute to the integration of the children of Florida and the children in the United States into the mainstream of society.

Id. at 217, n.3 provides examples of employment where the benefits would not be national in scope:

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.

In finding that the petitioner had not established the proposed benefit of her U.S. employment will be national in scope, the director's decision stated:

Regarding the second factor, "national in scope," you have not persuasively demonstrated that the proposed benefit of your prospective employment will be national in scope. You

have stated that you are to be employed by the "Spirituality for Kids" (SFK) program. This program appears to operate in several metropolitan areas in the United States, as well as other cities throughout the world. However, relative to your personal employment contributions to the organization, a letter included in the file from [REDACTED] states that you would be able to start working as a teacher, and after completing this process, would be able to "train other potential teachers in the Miami area." And then "expand and reach more counties in Miami and other states, with the ultimate goal of reaching kids in the public schools across the country." From the president's statements, it appears that your efforts will be initially relegated to South Florida, with the hopes of further expansion. While being limited to a particular geographic area is not a sole disqualifier for the "national in scope" criteria, there is nothing in the record to suggest that the benefit of your services will extend beyond the South Florida area for the foreseeable future. Based on the information presented, it has not been demonstrated that the benefit to the country that you will impart will be national in scope.

We affirm the director's findings. On appeal, counsel states:

In [*NYSDOT*], the beneficiary's occupation was limited to the geographic area of [New York], yet the AAO noted that the correlation between the national goal and the alien's activity need not be direct and held the beneficiary's job of maintenance and operation of NY bridges and roads was national in scope. Similarly, in this case, although [the petitioner's] work may begin in the geographic area of Miami, her work will affect the nation as a whole.

In *NYSDOT*, although the alien engineer's employment was "limited to a particular geographic area," the AAO found that "New York's bridges and roads connect the state to the national transportation system. The proper maintenance and operation of these bridges and roads therefore serve the interests of other regions of the country." *Id.* at 217. For comparison, in the present matter, [REDACTED] letter indicates that the SFK program in Florida's public school system presently consists of only a handful of schools in Miami-Dade County and that it hopes to add "at least six curriculum-time classes in at least 3 schools this fall." There is no evidence from the public school administration indicating that SFK is being utilized system-wide at the county level, let alone at the state level. Thus, aside from impacting classes at a small number of Miami-Dade County schools, the petitioner has not established that the benefits resulting from her work as a psychologist for the SFK program would be national in scope or otherwise "affect the nation as a whole" (as claimed by counsel). In contrast to the present matter in which the petitioner would "start working as a teacher for SFK" at various sites in Miami-Dade County with hopes of later expanding the program in other parts of Florida, the engineer in *NYSDOT* was working with New York's established transportation infrastructure which already had a tangible impact on the national transportation system.

Counsel further argues that "[j]uvenile delinquency is a national problem, not just local to South Florida." The petitioner's appellate submission includes information regarding juvenile crime and its associated costs. While juvenile delinquency certainly can be considered a national problem, the petitioner has not established that her proposed employment as a teacher or psychologist for the SFK program in South Florida would have a national impact on juvenile delinquency rates. Rather,

unlike the engineer in *NYS DOT*, her individual impact as a SFK teacher or self-employed psychologist would be so attenuated at the national level as to be negligible.

Counsel also asserts that "in the past four years there has been a mass exodus from Florida, most families will relocate to other areas of the country and the children who have had the opportunity to benefit from [the petitioner's] work will take this knowledge and experience with them to other parts of the country." The petitioner's appellate submission includes three articles discussing a decline in Florida's population, but none of these articles demonstrate that Florida has lost a significant percentage of its population. Contrary to counsel's claim that recently "there has been a mass exodus from Florida," the article in the *Palm Beach Post* entitled "Exodus from South Florida increasing" states: "Experts disagree on whether the new numbers show real population decline or simply indicate shifts in the demographic mix. They aren't sure whether they're the start of a long term decline or just a temporary response to a bad economy." Nevertheless, there is no evidence showing that the petitioner's position described in the letters from [REDACTED] and [REDACTED] or her unspecified self-employment as a child psychologist, will provide benefits that are national in scope. Rather, as previously noted, her services would be so attenuated at the national level as to be negligible.

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.

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 the project must also qualify for a national interest waiver. *Id.* at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

Parts 5 and 6 of the Form I-140, Immigrant Petition for Alien Worker, identify the petitioner's occupation and job title as "Clinical Psychologist." The record, however, does not reflect that the petitioner even meets the minimum educational and licensure requirements to practice as a Clinical Psychologist in the United States.¹ Accordingly, it is not apparent that the petitioner will benefit the

¹ For "Psychologists," the Department of Labor's Occupational Outlook Handbook, 2010-11 Edition (accessed at <http://www.bls.gov/oco/>), states that a "doctoral degree usually is required for independent practice as a psychologist" and that "[i]n *clinical, counseling, and school psychology*, the requirements for the doctoral degree usually include an

national interest to a greater extent than an available U.S. clinical psychologist who actually meets these minimum qualifications.

Along with her educational qualifications, training certifications, and documentation pertaining to her activities in the field, the petitioner submitted several letters of support.

states:

I hereby declare that [the petitioner] was employed at [redacted] from the 1 of November 2001 until the end of June 2006. She was employed as a behavioral expert, developmental and clinical psychologist.

In her function as psychologist she dealt with the assessment of juvenile delinquents and, in civil cases, assessing young children in multi-problem families, analyzing these family settings in order to enable the Dutch Court to take necessary steps and decisions to punish or protect these children.

Her special expertise was in the field of methodology related to intercultural problem solving. [The petitioner] is equipped [*sic*] with much experience in dealing with people from very different cultural backgrounds. She developed very effective, practical and promising tools for our organization to deal with intercultural family problems.

[The petitioner] showed us her very talent and experience in handling delicate cases. She was a socially very well equipped [*sic*] partner in multidisciplinary assessment meetings.

additional year of post-doctoral supervised experience." [Emphasis added.] The handbook also provides information about licensure stating:

Psychologists in a solo or group practice or those who offer any type of patient care – including *clinical, counseling, and school psychologists* – must meet certification or licensing requirements in all States and the District of Columbia. . . . *Clinical and counseling psychologists usually need a doctorate in psychology, an approved internship, and 1 to 2 years of professional experience.* In addition, all States require that applicants pass an examination.

* * *

The National Association of School Psychologists (NASP) awards the Nationally Certified School Psychologist (NCSP) designation, which recognizes professional competency in school psychology at a national, rather than State, level. Currently, 31 States recognize the NCSP and allow those with the certification to transfer credentials from one State to another without taking a new certification exam.

[Emphasis added.] See <http://www.bls.gov/oco/ocos056.htm>, accessed on April 8, 2010, copy incorporated into the record of proceeding.

As she was my direct colleague psychologist I remember [the petitioner] a highly qualified expert

does not provide specific examples of how the petitioner's work has influenced the field. With regard to the petitioner's behavioral expertise and job experience with the Child Protection Service, objective qualifications and experience necessary for the performance of a particular occupation can be articulated in an application for alien employment certification. Pursuant to *NYS DOT*, 22 I&N Dec. at 221, an alien cannot demonstrate eligibility for the national interest waiver simply by establishing a certain level of training, education, or experience that could be articulated on an application for employment certification.

in Coral Springs, Florida, states:

I opine that considering [the petitioner] under a National Interest Waiver would be of National Interest and of great contribution to the youths within our region where she would likely work. To explain, she has extensive training in normal and deviant child and adolescent development, and has spent ten (10) years working with youths who have developmental and environmental challenges. Additionally, she has provided services to youths and families within the individual, group and milieu modalities, and has extensive experience implementing behavioral interventions with parents and teachers. Moreover, her international orientation, understanding of culturally diverse issues, and fluency in four (4) languages, make her particularly unique in her field. Of note, despite the diversity of our State, there is a relative absence of Spanish and Dutch speaking professionals who are qualified to, and capable of, providing mental health services. . . . Additionally, despite there being an abundance of graduates from Masters Level programs, most do not pursue this line of work and neither do they possess the language skills and clinical competencies that [the petitioner] demonstrates. Also, her experience with programmatic methodology makes her a particularly distinct candidate, as this gives her unique insight in recognizing the need for structural changes when such are less apparent to other clinicians.

* * *

Ultimately, there is clearly an immediate need for her services in our community, as not only do we currently lack professionals with her impressive qualifications but must respond with urgency to the existing mental health needs of the children and families in our country.

As stated in *NYS DOT*, 22 I&N Dec. at 221, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. In addition, while asserts that a lack of professionals with the petitioner's qualifications is a consideration, *NYS DOT* specifically rejects that argument. *Id.* at 221. When discussing claims that the beneficiary in that case possessed specialized design techniques, the AAO asserted that such expertise:

would appear to be a valid requirement for the petitioner to set forth on an application for a labor certification. [The] assertion of a labor shortage, therefore, should be tested through the labor certification process. . . . The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor.

Id. at 220-221.

Moreover, the fact that the petitioner has an international background and, thus, is fluent in multiple languages including Dutch, Spanish and English, is not evidence that she has made or will make an impact on the field of psychological counseling other than to benefit her specific clients. While benefiting individual clients has intrinsic merit, the impact is not national in scope. If USCIS were to accept that the petitioner's multilingual ability warrants approval of the waiver, USCIS would need to approve the waiver for every alien from a non-English speaking country with a degree in a profession that provides services to the public (social workers, therapists, doctors, teachers, etc.) The petitioner has not established that Congress intended the national interest waiver to serve as a blanket waiver for all multilingual aliens providing services to the public.

[REDACTED] Haarlem, Netherlands, states:

[The petitioner] was my direct colleague from November 2001 until April 2005 when we both worked as behavioral experts for the Department of Justice, Child Protection Service in Haarlem, The Netherlands.

* * *

At the Child Protection Service [the petitioner] and I used to deal with civil cases, where we assessed difficult pedagogical situations children [were] growing up in. We would relate this to the developmental level of the child to see if the child's development was at risk and intervention by the Dutch government was necessary. We would advise the Dutch court how to help the family and the children. Often intensive psycho diagnostic evaluation of the child and/or the system around it was necessary in order to subscribe our advi[c]e.

Another task was the evaluation of young adolescents who have been in conflict with the law. We advised social workers to determine in what way the adolescent would benefit most in respect to his development and still feel the consequences of his defiant or delinquent behavior. At times we felt the necessity to see the child or adolescent ourselves and to carry out a psychodiagnostic evaluation which would result in a diagnosis and advise about the punishment/intervention.

* * *

To keep up to date with the latest theories and trends in our field we attended many symposia. [The petitioner's] analytical skills are very well developed and she always found a

way to translate what she learned in literature or at a conference to the daily practice. She translated several diagnostic criteria (from the DSM-IV classification system) of the most common disorders (attention deficit hyper activity disorder, borderline personality disorder, conduct disorder and oppositional defiant disorder) into behavioral checklists. These methodologies are still at great use for the social workers of the Child Protection Service in Haarlem in their evaluation of the family situations.

There is no evidence showing that the petitioner was an originator of the "DSM-IV classification system." Accordingly, her translation of this diagnostic material into behavioral checklists for her immediate employer does not demonstrate her influence on the field as a whole.

[REDACTED] at The Bascule, Center for Child and Youth Psychiatry, and Professor of Post Graduate Training, Regional Institutions for Continuing Education and Training (RINO), states:

In the years that [the petitioner] worked at the Institute, where her main focus was on the diagnostic evaluation and treatment of children and adolescents with very complex psychiatric disorders, she proved to be a very talented psychologist.

* * *

In our opinion, [the petitioner's] expertise is invaluable in any psychiatric setting whether it be forensic, in- or outpatient. [The petitioner] possesses the unique quality of being able to combine clinical knowledge and experience with personal characteristics such as reliability, candor, and openness – important prerequisites that enable a psychologist to contribute to the recovery of young clients and their parents.

As previously discussed, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. *NYS DOT*, 22 I&N Dec. at 221.

[REDACTED], Psychotherapist and Behavioral Therapist, The Bascule Center for Child and Youth Psychiatry, Amsterdam, states:

From November 1999 until November 2001 I . . . had the pleasure of working together with [the petitioner] at the Peadological Institute (PI) in Duivendrecht, the Netherlands. PI has been known since 2004 as "The Bascule," Center for Child and Youth Psychiatry

* * *

[The petitioner] developed a Diagnostics training to train students in the correct use of diagnostic tools and tests, such as intelligence tests, personality tests and ortho-didactic tests. She taught them in the various backgrounds and theories on the basis of which these tests were developed. . . . [The petitioner] later developed this diagnostics training into a course

for psycho-diagnostics for children and youth. This course is now taught yearly at the post-graduate course for "health care psychologists" (RINO).

* * *

[The petitioner] initiated an outpatient treatment center for children with a mental handicap and complex psychiatric disorders. The Peadological Institute initiated this out patient treatment center to fulfill the need for specialized psychiatric help for children with an intellectual handicap. [The petitioner] has actively participated in developing a methodology, which makes it possible to diagnose and treat this group of children. Because of her effort, intellectually challenged children can now benefit from evidence based treatment protocols.

* * *

As part of her regular job responsibilities [the petitioner] regularly participated in research projects from the VU University in Amsterdam. She also participated in PI research, for example a research into attachment representations of parents and attachment patterns of these parents with their own children.

states the petitioner developed a diagnostics training course taught "yearly at the post-graduate course for 'health care psychologists' (RINO)." The record includes a copy of the course material reflecting this five-day course was also prepared by . . . While the petitioner helped contribute to the course material at the institution where she trained, there is no evidence showing that the course material is being utilized by institutions with which the petitioner and Dr. . . . are not directly affiliated or that it has otherwise had a significant national impact in the field. With regard to . . . comments about the petitioner's development of an outpatient treatment program at the Peadological Institute, there is no evidence demonstrating that the petitioner's diagnosis and treatment methodologies have had a tangible national impact or otherwise significantly influenced treatment methodologies utilized by others throughout her field. Finally, regarding the research projects in which the petitioner was involved at VU University in Amsterdam, there is no evidence showing that she published the results of her work, that her work was frequently cited by independent researchers, or that her work has otherwise significantly influenced her field as a whole.

states:

I have worked with [the petitioner] from January 4th 1998 until the end of December 1999 in a private psychology practice; "practice for psychotherapy Amsterdam." . . . We both worked with adults at the time we were co-workers and it was [the petitioner's] first job in her field. Despite her limited experience at the time, her diagnostic and social skills were well developed . . . Since we both had a great passion for working with children, we created a plan to develop an outpatient diagnostic and treatment center for children. Before we could work out our plan fully, [the petitioner] was accepted in a post graduate professional training

program for health care professionals so she left the practice.... I stayed long enough to see the children's center become effective and it still is.

While the petitioner assisted [REDACTED] in developing an outpatient diagnostic and treatment center for children, there is no evidence demonstrating that the petitioner's work had a tangible national impact or otherwise significantly influenced treatment methodologies in her field.

The director denied the petition stating that the petitioner had not established that a waiver of the required job offer and approved employment certification would be in the national interest of the United States. The director's decision noted a lack of evidence showing that the petitioner's contributions have had such an impact on the field of clinical psychology that they clearly present a significant benefit to the field as a whole.

On appeal, the petitioner submits additional letters of support.

In her second letter, [REDACTED] states:

To clarify, it is not that there is a shortage of Master's level graduates in our country that choose to avoid this line of work despite being qualified, but rather they lack the requisite skills (i.e. language and clinical competencies) from the onset to even consider it an option. Hence, it is not an issue of "shortage" but rather a "shortage of unique professional skills, knowledge, and tools" that preclude these graduates from even being considered for such positions in the first place. Essentially, the methodologies and tools brought by [the petitioner] to our profession because of her unique knowledge and abilities (as discussed in my previous letter), place her in the position to significantly benefit the field of Psychology in an area that serves the national interest. Juvenile delinquency is a national problem, not a problem unique to South Florida.

At this point I would like to emphasize that [the petitioner] possesses markedly unique skills, abilities, and professional tools that set her apart from other Master's level graduates. That is, she has extensive training in normal and deviant child and adolescent development, and has spent ten (10) years working with youths who have developmental and environmental challenges. Also, she has provided services to youths and families within the individual, group and milieu modalities, and has extensive experience implementing behavioral interventions with parents and teachers. In addition, her international orientation, understanding of culturally diverse issues, and fluency in four (4) languages, make her a particularly distinct professional. Moreover, her experience with programmatic methodology gives her unique insight in recognizing the need for structural changes when such are less apparent to other clinicians.

[REDACTED] does not provide specific examples of how the petitioner's work has influenced the field as a whole. As previously discussed, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. *NYS DOT*, 22 I&N Dec. at 221. Moreover, with regard to [REDACTED]

Namer's observation that the petitioner has ten years of experience in her field, we note that having "at least ten years of full-time experience in the occupation" relates to the regulatory criteria for classification as an alien of exceptional ability, a classification that normally requires an approved labor certification. 8 C.F.R. § 204.5(k)(3)(ii). We cannot conclude that meeting one, two, or even the requisite three criteria for classification as an alien of exceptional ability warrants a waiver of the labor certification requirement in the national interest. By statute, "exceptional ability" is not, by itself sufficient cause for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Thus, the *benefit* which the alien presents to her field of endeavor must greatly exceed the "achievements and significant contributions" contemplated for that classification. *Id.*; *see also id.* at 222.

██████████ of Community and Corporate Services, Center for Creative Living, Coral Springs, Florida, states:

In talking to [the petitioner], I learned that she had a primary interest and focus in the area of juvenile delinquency and conduct disorder on the part of adolescents and had done significant work in the court system of the Netherlands. She spoke about her involvement in an integrated system where psychologists worked directly with social workers to obtain optimal success in both the diagnosis and treatment of the identified, troubled adolescents who she worked with. [The petitioner] was involved in the diagnostic procedures in identifying the specific emotional and cognitive difficulties these teenage individuals had which contributed to their acting out and anti-social behavior. She also became quite versed in the area of dual diagnosis, i.e. treating children and adolescents who were significantly impaired and who also showed acting-out behavioral/severe emotional problems. So with this in mind, in the primary population of both academic interest and professional interest, i.e. 14-17 year old youth who are leaning toward conduct disorder/developing anti-social orientation toward the world, [the petitioner] brings to the table a diverse array of both academic skills and enriched work experience in working with this population in the Netherlands.

Along with her training and work with delinquent youth, she also is trained in the forensic family court system as a diagnostician and identification person regarding the stress and conflict children go through during divorce resulting in appropriate placement in the child's best interest for which parent would be able to psychologically take care of the child.

██████████ recounts information provided to him by the petitioner, but he does not provide specific examples of how the petitioner's work has influenced the field as a whole. As previously noted, it cannot suffice to state that the alien possesses useful skills or special training. Regardless of the alien's particular experience or skills, even assuming they are unique, the benefit the alien's skills or background will provide to the United States must also considerably outweigh the inherent national interest in protecting U.S. workers through the labor certification process. *NYSDOT*, 22 I&N Dec. at 221.

██████████ The Institute for Behavioral Sciences and the Law, states:

I was requested to address the area of the possible contribution of the applicant in serving the national interest of the United States I reviewed the letter of [the petitioner] dated October 17, 2008 and her professional curriculum vita.

Based upon a review of the above documents, it is my opinion that the applicant possesses specialized skills and training far above the level of most other individuals in the mental health field.

* * *

Although it may be necessary for the applicant to start at a local level in the implementation of her therapeutic approaches, it would likely be only a matter of time before she would be requested at a national level to consult with various juvenile programs.

Aside from the preceding observations, much of [redacted] letter focuses on the petitioner's educational qualifications, experience with juveniles, and fluency in multiple languages. As stated in *NYSDOT*, 22 I&N Dec. at 221, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Specialized skills, experience, and educational training do not inherently meet the national interest threshold. [redacted] points out that "it may be necessary for the applicant to start at a local level in the implementation of her therapeutic approaches." He then opines that "it would likely be only a matter of time before she would be requested at a national level to consult with various juvenile programs." A petitioner, however, cannot file a petition under this classification based on the expectation of future eligibility. See *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

In her second letter, [redacted] states:

The letter of the USCIS suggests that the development of the behavioral checklists by [the petitioner] only contributed to one institution (the Child Protection Service in Haarlem). Perhaps I was not specific in my previous letter but I strongly disagree with this assumption. These checklists are not only used in one institution, but are widely used in all the 22 offices of the Child Protection Service whose objective is to protect children in the entire Country. The checklists are also used by Clinical psychologists in other institutions. I, for example, also use these checklists in my current job at "de Waag," a center for Forensic Psychology to guide me in making more accurate diagnosis of disorders and subsequently better indications for treatment. In my opinion she profoundly advanced the field of Clinical Psychology with the methodology she developed.

We note that [redacted] initial letter stated that the diagnostic criteria in the petitioner's checklists originated "from the DSM-IV classification system." There is no evidence showing that the petitioner was the original developer of the DSM-IV classification system that she translated into behavioral checklists for use by the Child Protection Service. The petitioner's transcription of diagnostic criteria developed by others into checklists utilized by her employing agency does not

demonstrate her influence on the field as a whole. Moreover, aside from herself, [REDACTED] does not identify the "Clinical psychologists in other institutions" who utilize the behavioral checklists.

In her second letter, [REDACTED] states:

I stated . . . that [the petitioner] developed a post graduate course regarding psychodiagnostics for children and youth.

The USCIS understood from my letter that this course is only used in one institution and therefore their conclusion is that it has made no significant impact to the field of Clinical psychology. I strongly disagree with this statement. The objective of the course and the impact of [the petitioner's] contributions to the field of psychology are, in my opinion, misunderstood and underestimated by the reviewing authority.

The course is taught in a 2 year advanced level educational program (post Masters) for Health care psychologists. These psychologists are taught valuable and extensive diagnostic skills which they take into their future careers in the field of Clinical psychology. These psychologists use the acquired skills in the different institutions where they are employed during and after their post graduate education. . . . Therefore, the contribution of [the petitioner] does impact the field of endeavor as a whole and is not only limited to one institution.

While the petitioner helped Dr. [REDACTED] prepare the preceding five-day course taught at the RINO, there is no evidence showing that the course material is being utilized by educational institutions with which the petitioner is not directly affiliated or that it has otherwise had a significant national impact in the field as a whole. Aside from the students who attend this course, there is no evidence demonstrating its impact on fully trained psychologists in the field. In this instance, the petitioner has not established that her assistance in the preparation of material for a single training course inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

In evaluating the reference letters, we note that the letters discussing the petitioner's work experience, education, and training are less persuasive than letters that provide specific examples of how the petitioner has influenced her field. In addition, letters from independent references who were previously aware of the petitioner through her reputation as a psychologist and who have applied her work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review her curriculum vitae and work and provide an opinion based solely on this review.

USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from individuals selected by the petitioner is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an

opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)). In this case, the content of the letters of support submitted by the petitioner does not establish that her work at the time of filing the petition had already had a significant national impact or otherwise influenced her field as a whole.

With regard to the petitioner's "position of Clinical psychologist" with SFK, counsel argues that labor certification delays would greatly impact the petitioner's work. 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. *NYS DOT*, 22 I&N Dec. at 223.

While petitioner has earned the admiration of her colleagues, she has not established that her past record of achievement is at a level that would justify a waiver of the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. We note that the petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that her influence be national in scope. *NYS DOT*, 22 I&N Dec. at 217 n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219 n.6 (the alien must have "a past history of demonstrable achievement with some degree of influence on the field as a whole.")

As is clear from a plain reading of the statute, it was not the intent of Congress that every alien holding an advanced degree 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 occupation, 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.