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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

B5



DATE: **FEB 29 2012** OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a researcher/instructor in public health, community and international development. At the time she filed the petition, she was a social epidemiologist at [REDACTED] and [REDACTED] at Bohecker College, Westerville, Ohio. She has since begun working at Central State University, Wilberforce, Ohio. 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, the petitioner submits a brief from counsel and copies of previously submitted letters.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –

(A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer –

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of “in the national interest.” The Committee on the Judiciary merely noted in its report to the Senate that the committee had “focused on national interest by

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now U.S. Citizenship and Immigration Services (USCIS)] 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 (NYSDOT), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show 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 United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish 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 intention behind the term "prospective" is 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 AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on January 4, 2010. In an accompanying statement, the petitioner stated:

My application for national interest waiver is based on my ability and expertise in interdisciplinary research in public health, demography and economic development; and my holding advanced degrees including a Doctorate in Rural Sociology (minor in

International Development and Public Health) from an internationally reputable Ohio State University, Columbus, OH. . . .

My areas of specialization are social demography, social epidemiology (health promotion and health education; biostatistics and health survey methods and epidemiology-focus on social inequalities of health), gender issues and community development. . . .

My research agenda focuses on health inequalities among minorities. . . . [M]y current agenda is directed toward the African immigrant population, specifically the Somali immigrants.

. . . Somali immigrants face a myriad of obstacles with health ranking high on the list. Health issues for new immigrants include but are not limited to malnutrition, sexually transmitted diseases, and tuberculosis. Delivery of adequate health care to Somalis has also been challenging to the American medical community. . . .

Against this background, my research agenda concentrates not only on the health challenges faced by the Somali population, but also the challenges confronting the medical community in dealing with this population. In line with this agenda, I am in the process of developing a study . . . based on the notion that to tackle the Somali population health issues and design appropriate health interventions it is important to first identify the gaps in knowledge among the medical community.

. . . I am also increasingly interested in the social context of chronic disease such as obesity and diabetes, which are on the rise in the United States particularly in the context of African immigrant populations. . . .

My research also centers on the socio-economic context of health in sub-Saharan Africa. This agenda recognizes that health and demographic issues in sub-Saharan Africa need to be studied as enmeshed with the region's social, economic and political context.

. . . [M]y research agenda also seeks to explore AIDS impacts on rural livelihoods in sub-Saharan Africa. . . .

This study makes a significant contribution to the United States Agency for International Development (USAID)'s mandate geared toward approaches for reducing infection and enhancing economic security in sub-Saharan Africa.

. . . I am also engaged in research that examines . . . the implications of agriculture for women's well being measures such as women's autonomy (empowerment) and household food security. Additionally I have also examined the gender influences on the design of agricultural interventions in developing countries.

The petitioner submitted copies of reports, research agreements and other evidence of her participation in various grant-funded projects. These materials confirm the nature of the petitioner's occupation, but neither the nature of her occupation nor her choice of research topics presumptively entitle her to a national interest waiver. There is no blanket waiver for researchers in her specialty. She must establish not only the goals of her work, but also the impact and influence that she has already had through her previous efforts. 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. *NYSDOT*, 22 I&N Dec. 215.

The petitioner submitted a letter from [REDACTED], senior research fellow at IFPRI, who stated: "[the petitioner] continues to work with me as a long-term consultant. . . . Her work is crucial to progress in several projects that are underway, and her performance to date has been excellent." [REDACTED] three-sentence letter contains no details about the petitioner's work or accomplishments.

On February 17, 2010, the director issued a request for evidence, instructing the petitioner to submit evidence and testimony to establish eligibility for the national interest waiver under *NYSDOT*. In response, the petitioner stated: "I believe that my work stands to make a significant impact in my field." Assertions about the potential for future impact are, by nature, speculative and conjectural. As noted previously, the petitioner must establish prior impact that justifies such predictions. The petitioner states: "I was approached by authorities in the field of HIV/AIDS and requested to contribute to the research by authoring a chapter in an upcoming Earthscan publication, [REDACTED] [REDACTED]." The record contains excerpts of the manuscript for this book. [REDACTED] was one of the book's three editors, and therefore the petitioner's involvement in the book is not evidence that her work attracted outside attention.

The petitioner submitted copies of completed research papers and evidence of conference presentations. These materials demonstrate that the petitioner has been active in her field, but their significance is not self-evident.

The petitioner's response included three new witness letters. In one letter, [REDACTED] provided further information about the petitioner's work:

I first met [the petitioner] as her supervisor for an IFPRI-funded project for which she was the principal investigator. [The petitioner] innovatively developed a research project that examined the interactions between agriculture, food security and HIV/AIDS in Kenya. In particular, the project examined how sub-regional agricultural contexts in Kenya may create situations of economic dependency and food insecurity and condition women's vulnerability to HIV. [The petitioner's] project was meticulously articulated and critically thought-out and the ensuing research has contributed immensely not only to methodological innovation in the field, but has served to push the frontiers of HIV research further by teasing out how

contexts of poverty, particularly agriculture . . . may condition vulnerability to the epidemic. Previously, researchers had given more attention to the impacts of HIV on agriculture and [the petitioner's] research served to draw attention to the reverse relationship, a previously under-researched angle. . . .

[The petitioner] has recently developed a document that proposes methodologies and approaches for setting priorities at the interface between agriculture and health. This document is currently an IFPRI working paper and the proposed approaches will be implemented in an upcoming stakeholder conference on agriculture and health in sub-Saharan Africa to be held in southern Africa later this year. This is an important contribution, which I believe will serve as a roadmap to guide strategies to enhance collaboration between the two sectors. . . .

In my view, [the petitioner's] expertise and quality of work in the field of agriculture and health is indispensable and stands to make an important contribution to the current U.S. global development agenda.

█ the petitioner's doctoral studies advisor and chair of her dissertation committee at Ohio State University (OSU), stated:

[The petitioner's] dissertation . . . combines her interests in development, social inequality, and demography in the context of sub-Saharan Africa. Her goal was to examine . . . the degree to which women's HIV/AIDS[S] risk varies across different regional contexts in Kenya that are characterized by different "agricultural production-consumption regimes" (structural attributes of local production and household inequalities). . . . She brings together bodies of work often kept separately in scholarly literature—research on women's position, health disparities, and agricultural production. Another conceptually innovative aspect of the project is her consideration of agricultural regimes as a determinant rather than causal outcomes of HIV/AIDs. . . .

As part of her dissertation project, [the petitioner] also developed two independent manuscripts. . . . A large body of work has shown that women's decision making autonomy has important implications for . . . fertility, reproductive and sexual health. [The petitioner's first] manuscript moves this literature forward by understanding how the agricultural context within which a woman is located impacts her decision-making autonomy, over and above her individual-level characteristics such as marital status, age, education and occupation. . . . The second manuscript . . . extends the on-going agricultural-structure-food security debate that has predominantly focused on the impacts of agricultural commercialization on household food security.

█ was another member of the petitioner's doctoral committee. █ stated:

[The petitioner] creatively tailored and pursued her PhD program in Rural Sociology, combining coursework that draws from social demography, public health and international development, with an emphasis on development issues confronting sub-Saharan Africa. She skillfully crafted her research topic which focused on the interactions between agriculture, food security, and HIV/AIDS in Kenya. . . . This research was not only timely, but innovative. Previous research focusing on factors driving the HIV epidemic in Africa concentrated on individual factors such as sexual behavior and cultural aspects but usually ignored the underlying factors that shaped the epidemic such as poverty and livelihood opportunities of which agriculture . . . is a major component. [The petitioner] continues to pursue research examining the linkages between agriculture and health. . . .

I continue to work collaboratively with [the petitioner] on the East African Integrated Pest Management (IPM), Collaborative Research Support Program (CRSP). . . .

Through her engagement in IPM CRSP research activities [the petitioner] has assisted our collaborators, both U.S. and East African, in developing an understanding of the importance of integrating a gender perspective into project activities. . . . Her research provides evidence that with more intensive horticultural systems, the gender-specific nature of African farming is transitioning, a finding that may have important implications for the design of development interventions in this region and sub-Saharan Africa in general.

The director denied the petition on December 1, 2010. The director acknowledged the intrinsic merit and national scope of the petitioner's occupation, but stated:

[The witnesses] speak of [the petitioner's] work experience mostly in general terms with the exception of her dissertation work which she completed about a year ago. The letters indicate that the self-petitioner is well qualified to conduct important research in her field, but do not clearly delineate how the self-petitioner's past accomplishments are a reasonable basis for the granting of a national interest waiver on her behalf.

The director noted the lack of "objective documentary evidence" that would distinguish the petitioner's research from that of other qualified researchers in the specialty.

On appeal, the petitioner submits an unsigned, undated statement that essentially repeats her earlier statement in response to the request for evidence. In a separate brief, counsel states that the petitioner provided her own "very detailed statement in support of the National Interest Waiver," as well as "letters of support . . . from other outstanding researchers." The petitioner's own statements can serve to explain the nature and goals of her research, but cannot objectively establish the importance thereof. 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)).

The petitioner submits copies of the previously submitted witness letters. The AAO notes that the new copy of [REDACTED] letter is printed in a different font than the previous copy, but the text is identical. All three of the witnesses have worked closely with the petitioner, at OSU or at IFPRI. These witnesses cannot attest, first-hand, to the impact of the petitioner's work outside the institutions where (or on behalf of which) she performed her work, and in terms of their own collaborations with the petitioner, their assessments are no more disinterested than the petitioner's own. The witnesses identified no external, concrete effects (such as policy changes) that directly resulted from her work. They indicated, instead, that the petitioner pursued novel or previously neglected avenues of inquiry.

Counsel lists a number of unpublished AAO appellate decisions approving national interest waivers. Counsel does not provide any of the facts from the cited decisions except to identify the occupations of the respective beneficiaries. Counsel fails to explain how these unpublished decisions are relevant to the present proceeding. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. The decisions show that workers in a wide range of fields can qualify for the waiver, but the director never stated that the petitioner's occupation disqualified her for the waiver. At issue is not what the petitioner does, but the significance of what the petitioner has so far accomplished. Counsel asserts that "it is obvious that the adjudicating officer applied an incorrect legal standard in denying the petition," but this conclusion is not at all obvious from the evidence presented.

There is no dispute that the petitioner's academic area of research is an important one, or that it is necessary to seek solutions to poverty, epidemics, and other serious problems facing sub-Saharan Africa. It does not follow, however, that the petitioner qualifies for a waiver simply by virtue of performing research in that area (or intending to perform such research). The petitioner has submitted no persuasive, objective evidence that would distinguish her work from that of other competent and qualified scholars who, like her, seek solutions to these pressing problems.

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.

ORDER: The appeal is dismissed.