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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

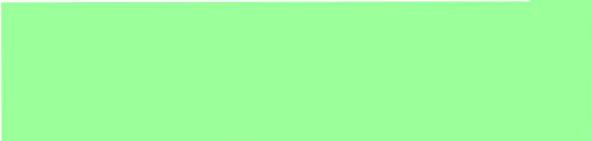


U.S. Citizenship
and Immigration
Services



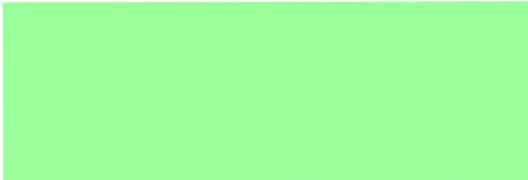
DATE: **JUL 02 2014** OFFICE: TEXAS SERVICE CENTER

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:

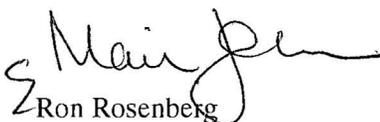


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg

Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before us at the Administrative Appeals Office on appeal. We will dismiss the appeal.

The petitioner seeks classification under 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 lecturer/professor at the [REDACTED] where she currently holds the title of “lecturer.” 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 legal brief and documentation regarding her employment at [REDACTED]

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, Pub. L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), published at 56 Fed. Reg. 60897, 60900 (Nov. 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.

In re New York State Dep’t of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm’r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish 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.

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. *Id.* at 219. The petitioner’s assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term “prospective” is included 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 USCIS 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, Immigrant Petition for Alien Worker, on July 9, 2012. On Part 6, line 3 of the petition form, the petitioner provided this description of her job:

Teaches research and critical writing for Speakers of English as a Second Language and Portuguese as a Second Language. Teaches English as a Second Language (ESOL) and Portuguese Brazilian languages and culture. Also holds regular weekly office hours, developing curriculum in Brazilian Studies; organizing extra-curricular

activities for students in Brazilian Studies; and participating in curriculum development for ESOL programs.

A statement submitted with the petition explained the basis for the waiver application:

Brazil is an emerging world power, with great economic potential. For the U.S. to maintain its global leadership position, it is paramount for the U.S. to develop and grow its relationship with Brazil. . . . To this end, our nation's ability to speak, read, and write Portuguese (the official language of Brazil) is essential.

[The petitioner] is playing a key role in this endeavor by teaching the next generation of professionals the Portuguese language. Further, she is broadening the U.S. relationship with Brazil by bringing a study abroad program in Brazil to [REDACTED] . . .

[The petitioner] has made many important contributions to the field of education, enabled by her exceptional ability in the field. . . .

Requiring labor certification would stifle [the petitioner's] ability to move significantly forward in education, with advancements being made almost daily. Labor certification requires the petitioning employer to define early the subject position and its duties. It does not allow for material changes to these definitions. It does not allow for the beneficiary to materially advance within the field. In order for [the petitioner] to benefit most significantly the field and the nation, she must be able to adapt to this rapidly advancing field and move to the environment most in needs of his [*sic*] abilities and skill-set.

The last paragraph quoted above focuses not on the petitioner's work or its impact on the field, but on perceived flaws in the labor certification process itself. The national interest waiver is not simply a means for employers or self-petitioning aliens to avoid the inconvenience of the labor certification process. *See NYSDOT*, 22 I&N Dec. at 223. The claim that the petitioner's occupation is ill-suited to labor certification does not exempt her from the job offer requirement that, by statute, applies to members of the professions, including teachers at the university level. *See* sections 101(a)(32) and 203(b)(2)(A) of the Act. The petitioner has not demonstrated that college instructors in general, or lecturers on Portuguese language and culture in particular, have been unable to obtain labor certifications owing to the dynamics of the field. Furthermore, the labor certification process would not permanently prohibit the petitioner from changing specific job duties at some future time.

The petitioner's *curriculum vitae* lists one entry under the heading "Publications." Specifically, the petitioner listed [REDACTED] published by the print-on-demand publishing house [REDACTED]. The book appears to be an adaptation of her doctoral dissertation, [REDACTED]

The petitioner submitted a printout of an electronic mail message dated March 22, 2012, indicating that the journal [REDACTED] had accepted a manuscript by the petitioner. The manuscript is a review of the book [REDACTED] by [REDACTED]. Dr. [REDACTED] book/media review editor of [REDACTED] stated: “we at [REDACTED] are very selective in the acceptance of submitted articles/reviews,” and that the petitioner’s book review passed “a rigorous, double-blinded peer-review.” The review “is scheduled to be published . . . in December 2012,” and therefore had not appeared in print at the time of filing.

The petitioner also submitted a copy of [REDACTED] published in the first issue of the open-access journal [REDACTED] in 2012. According to annotations on the document, the piece is a “Full Length Research Paper . . . developed for use in the course ‘Politics in Higher Education,’ in the Educational Leadership Master’s Program.”

The petitioner submitted letters from former students who had taken undergraduate-level courses in Portuguese. [REDACTED] stated: “I was able to apply the skills I acquired in [the petitioner’s] class . . . when I traveled to Brazil after taking her Portuguese course. Beyond my greatly improved ability to converse in Portuguese, [the petitioner’s] lessons were instrumental to my understanding of the culture, language, and appreciation of the country.”

[REDACTED] stated: “In [the petitioner’s] class I was able to gain a strong foundation for my studies of Portuguese that have helped me throughout my college career as a political science and Latin American studies major.”

The satisfaction of individual students is not an indication of the petitioner’s broader impact on the field of education. In an effort to establish such impact, the petitioner submitted letters from several individuals in her field. Dr. [REDACTED] associate professor at [REDACTED] chaired the petitioner’s doctoral committee there. Dr. [REDACTED] stated that the petitioner’s “dissertation remains an important piece of the empirical research literature nationwide,” and that she “has had extensive service in educational leadership, not only at [REDACTED] but also in Brazil where she worked as an Assistant Principal at [REDACTED].” The petitioner did not submit documentary evidence, such as citation data, to confirm the importance or influence of her dissertation. The petitioner identified no widespread changes in educational policy, for instance, that have arisen as a result of her work.

Professor [REDACTED] chair of the Department of Languages and Linguistics at [REDACTED] called the petitioner “one of the best full-time lecturers our department has,” with “a stellar record as a teacher for both Portuguese and English as a Second Language.” She did not discuss the petitioner’s influence on her field beyond [REDACTED]. She stated that the petitioner “has . . . been instrumental in creating and implementing a Study Abroad Program in Brazil, which she hopes will be available in the summer of 2013.” Because the study abroad program was not yet in place when the petitioner filed the petition in 2012, there was, as yet, no indication that this program would influence the field or stand out in any way from similar study abroad programs offered by other colleges and universities. An applicant or petitioner must establish that he or she is eligible for the

requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1). USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

Dr. [REDACTED] later an associate professor at [REDACTED] was a doctoral student at [REDACTED] while the petitioner was studying for her master's degree there. Dr. [REDACTED] stated that the petitioner "has achieved a great deal in the field of education that has and will continue to greatly benefit students and other educators in the US." Dr. [REDACTED] then described the petitioner's doctoral dissertation, conference presentations, teaching experience, and other achievements, stating that these accomplishments are "only the tip of the iceberg." In one of the listed items, Dr. [REDACTED] stated: "As a reviewer for [REDACTED] . . . she has helped many scholars throughout the U.S." At the time Dr. [REDACTED] wrote this comment in April 2012, the petitioner had written only one review for [REDACTED] which would not be published for another eight months. Commentary about the impact of the petitioner's reviewing work, therefore, was premature.

Others who have worked with the petitioner in various capacities praised the petitioner's professional qualifications, but did not show that the petitioner's work has had an influence beyond the institutions where she has worked. For example, Dr. [REDACTED] an assistant professor at [REDACTED] stated that the petitioner "has become a valued member of the department." He claimed that "[h]er work has had impact beyond the boundaries of our region," but did not elaborate on that point.

Dr. [REDACTED] associate professor at [REDACTED] has "known [the petitioner] for over twenty years"; both studied in [REDACTED] Brazil, in the early 1990s. She stated that the petitioner "has . . . impacted the nation by teaching research and critical writing for speakers of ESL and Portuguese as a second language," and that the petitioner's book "is all the more relevant and impactful because [the petitioner] lives in an area of great diversity in the Southwest United States." Stating that the petitioner's work has had impact does not establish the nature or extent of that impact, and unsupported claims of impact have no evidentiary weight. 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)).

Professor [REDACTED] of the [REDACTED] met the petitioner during her brief employment there in 2009-2010. Prof. [REDACTED] cited the petitioner's "rare combination of skills" and stated: "[t]he demand for qualified, experienced English as a Second Language (ESL) teachers is enormous." He did not, however, indicate that the petitioner has had any impact in her field.

The director issued a request for evidence on November 10, 2012, stating: "The petitioner must establish . . . a past record of specific prior achievement with some degree of influence on the field as a whole." The director also stated that the petitioner's initial evidence "did not show how the beneficiary's contributions to her field are national in scope."

In response, the petitioner submitted a new statement protesting that the director did not discuss any of the petitioner's initial evidence. The statement addressed the "national scope" issue by stating that the petitioner's "previous and current students are applying their new language skills to benefit our national economy and security." In this way, the petitioner claims a share of the credit for her students' accomplishments, stating that her tutelage made those achievements possible. More persuasively, the statement noted the petitioner's publication and presentation of research, thereby disseminating her work beyond her own classroom.

To establish the petitioner's impact on her field, the petitioner submitted another set of letters. These writers asserted that the petitioner influences her field because she is a skilled and effective teacher, and there is a need for such teachers. The petitioner submitted background evidence regarding the economic importance of Brazil and rising demand for Portuguese language teachers. The information about Brazil addresses the intrinsic merit of the petitioner's occupation, which the director did not question. Information about a shortage of teachers in the petitioner's field does not address the *NYS DOT* guidelines because, under that decision, a shortage of workers is not grounds for a national interest waiver. Rather, the labor certification process addresses worker shortages. *Id.* at 218. There is no blanket waiver for Portuguese teachers, based either on the importance of the occupation or on demand for qualified workers. Instead, the petitioner must establish how she, individually, stands out in her field in a way that justifies an exemption from the statutory job offer requirement that normally applies to workers in that field.

More of the petitioner's former students attested that the petitioner prepared them for business dealings in Brazil. These individuals have benefited from the petitioner's instruction, but the record does not show that it is unusual, rather than expected, for college study to prepare students for future employment.

The director denied the petition on December 6, 2013. The director acknowledged the intrinsic merit of Portuguese language instruction, but found that the overall importance of the petitioner's field is not, by itself, grounds for approving the waiver. The director stated:

The recommendation letters state that the beneficiary is an accomplished Lecturer/Professor. However, these recommendation letters failed to detail how the accomplishments of the beneficiary are of unusual significance above those of other Lecturers/Professors in the field. . . .

The additional evidence that was presented [in response to the request for evidence] makes references to the field as a whole . . . [but] does not address how the beneficiary's employment at [redacted] will be national in scope or how the U.S. would be adversely affected if the beneficiary was required to obtain a labor certification.

The director also asserted that a shortage of qualified workers in the petitioner's field is not grounds for a national interest waiver, and that the petitioner's classroom instruction lacks national scope.

On appeal, the petitioner submits an appellate brief setting forth the claim that the petitioner “has an extensive and unique background and set of accomplishments in the field of education.” The brief describes the petitioner’s past employment and lists her written and presented work, including some items that appeared after the petition’s filing date. Listing these items does not establish their significance, impact, or influence on the petitioner’s field.

The brief contests the director’s finding that the petitioner’s work lacks national scope, because “[m]any of her students have gone on to take positions/studies of great importance across the nation.” The brief cites three examples, all of whom were graduate students studying for master’s degrees at the time they wrote their letters. Descriptions of how each student “plans to apply his skills in Portuguese” amount to speculation rather than evidence. Furthermore, the hypothetical future achievements of these students depend on their knowledge of the Portuguese language, not on the petitioner being the one teaching them.

The petitioner’s research and presentations present a better claim for national scope, because these efforts are disseminated through the field rather than confined to the classroom. In this way, the petitioner has established that her occupation produces benefits that are national in scope. Nevertheless, this second prong of the *NYSDOT* national interest test, like the first prong dealing with intrinsic merit, concerns the occupation in general rather than the petitioner in particular. To satisfy the third *NYSDOT* prong, it cannot suffice for the petitioner to establish the existence of published and presented work. She must also demonstrate the impact and influence of that work.

The brief indicates that the petitioner’s “accomplishments were in fact well above that minimally required for the position of Lecturer”; for instance, the petitioner holds a doctorate while the position (a non-tenure-track teaching post) requires only a master’s degree. The issue, however, is not whether the petitioner possesses more than the minimum qualifications for the job. 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 field, and section 203(b)(2)(A) of the Act states that aliens of exceptional ability are subject to the job offer requirement. Therefore, the assertion that the petitioner possesses better qualifications than other lecturers does not demonstrate eligibility for the waiver.

The appellate brief repeats the claim that labor certification requires “restrictions [that] would prevent [the petitioner] from using her full capabilities to benefit her students, her peers, and the national interest.” The petitioner has not corroborated or elaborated on this assertion.

The petitioner’s appeal includes documentation regarding her position at [REDACTED] and her recent activities, including an upcoming conference presentation and a second book review for [REDACTED]. Like previous exhibits, these materials establish activity but not influence. The record does not show that the petitioner has introduced significant new teaching methodologies, measurably affected economic relations with Brazil, or otherwise had an impact beyond what could be expected from a qualified teacher in her specialty.

The record establishes that Portuguese language instructors perform a useful function, and that the petitioner is well qualified for such work. The petitioner, however, has not shown that she, in particular, has had a significant impact or influence on her field, or that her continued employment in the United States would serve the national interest to an extent that would warrant a waiver of the job offer requirement that normally applies to the immigrant classification she seeks.

The petitioner has not established a past record of achievement at a level that would justify a waiver of the job offer requirement. 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. *NYSDOT*, 22 I&N Dec. 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 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.

We will dismiss the appeal for the above stated reasons. In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.