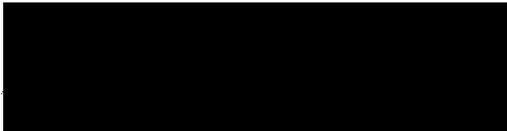




U.S. Department of Justice
Immigration and Naturalization Service

B5

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC 99 073 50276 Office: VERMONT SERVICE CENTER Date:

AUG 22 2000

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)

IN BEHALF OF PETITIONER:



Public Copy

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Terrence M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

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 financial analyst. 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 had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

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

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

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

(B) Waiver of Job Offer. -- The Attorney General may, when he deems it to be in the national interest, waive the requirement 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 holds a Ph.D. degree in Applied Mathematics from the [REDACTED] and thus qualifies as a member of the professions holding an advanced degree. The remaining issue 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 Service 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 Service regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

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.

The petitioner's employer describes the petitioner's work:

[The petitioner] performs highly innovative mathematical modeling of the financial markets and the relative risk analysis involved in particular financial instruments. He brings to this work a unique range of multi-disciplinary expertise in applied mathematics, finance and systems engineering. His work has already gained significant attention from academia, the private financial services market, and government officials. The goal of his work is to accurately assess and evaluate financial markets and specific instruments within those markets, for the purpose of gauging risk and achieving optimum stabilization. This goal is shared by every government of the world, including ours, and all private sector business leaders.

The petitioner submits letters from several witnesses [REDACTED]

[REDACTED] states:

I have known [the petitioner] for several years; during my stay at the [REDACTED] while I was pursuing my Ph.D. in Finance. We have engaged in extensive discussions on mathematical modeling issues during this time. During these discussions, I found [the petitioner] to be an extremely bright, insightful and technically adept person.

[REDACTED] states that the petitioner "is unusually agile at understanding quickly what troubles his students about a concept or problem."

[REDACTED] states:

I see the work of [the petitioner] as very important to the future of security pricing in the financial markets. The original work in this area was based on supposing that prices

move continuously in time with no gaps or sudden drops. Recent market experience has questioned this assumption and led to the development of pricing frameworks that build on such discontinuities. The appropriate mathematics for this work is the specialty of [the petitioner] and he is pioneering the development of solutions to pricing problems in this framework. The important area of credit derivatives is also an area of application of these methods as are the new and growing markets in electricity derivatives.

[REDACTED] Department of the Treasury, praises the petitioner's "important contribution to the options pricing literature." [REDACTED]

[REDACTED] of [REDACTED] states that "[r]egarding [the petitioner's] contributions to these subjects, what I can say now is that he has written a good thesis, he is preparing publications resulting from the research in this thesis, and he is well-trained for a variety of jobs." [REDACTED]

[REDACTED] strongly recommends the petitioner for a national interest waiver.

[REDACTED] states that the petitioner's "work in applied mathematics, engineering, and finance will benefit the United States and its national interests."

On appeal, counsel asserts that the expert testimony submitted with the petition "demonstrates that the enumerated elements are satisfied for an overall showing that his unique and individual skills outweigh the interests that are inherently provided through labor certification." Counsel further asserts:

In regards to the above Second issue, we strongly argue that the requiring of labor certification in this situation would be most inappropriate and contrary to the national interest for several reasons. As discussed above, the unique and highly individual skills that most significantly contribute to this alien's success in the field are not accommodated in a labor certification. They are subjective, as opposed to objective, qualities that can not be articulated in such an application. Comparably qualified workers would not achieve the same results. Requiring Prudential Securities or other employers to use any other similarly educated Ph.D. for this work is an overwhelming burden. The stakes are far too high to entrust this work to any individual solely on the basis of education and/or experience.

Counsel has asserted that the petitioner is a key member of the various projects with which he is involved. It has not been made clear, however, what contributions the petitioner has made which could not presumably have been made by a fully qualified U.S. worker in the same position. Counsel, having argued that the national interest would be best served by not offering the position

in question to a U.S. worker, must now establish this proposition through evidence and compelling argument, rather than simply listing the petitioner's duties and asserting that, as a result of those duties, the beneficiary serves the national interest.

The petitioner has not shown that the benefits from his work, which are unique to the petitioner rather than intrinsic to the job being performed, are or will be so significant at a national level that the intending employer should be exempt from the job offer/labor certification requirement which normally attaches to the visa classification sought. Because the petitioner has requested a benefit above and beyond the underlying visa classification, the petitioner must be subject to a greater standard of evidence concomitant with the greater benefit sought.

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, U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.