



U.S. Department of Justice

Immigration and Naturalization Service

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



File: [Redacted] Office: Vermont Service Center Date: JAN 10 2000

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)

IN BEHALF OF PETITIONER:
[Redacted]

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

Robert W...
E2 Terrance 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 sustained and the petition will be approved.

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 at [REDACTED]

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 Economics from [REDACTED]. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner 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.

Matter of New York State Dept. of Transportation, I.D. 3363 (Acting Assoc. Comm. for Programs, August 7, 1998), 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. Next, it must be shown 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 U.S. worker having the same minimum qualifications.

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. 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.

The petitioner describes her educational and professional history, and states that she can assist "a broad spectrum of U.S. companies or [the] U.S. government in improving their productivity, performance, and competitive positions to the benefit of [the] U.S. economy." Counsel asserts that the petitioner "has played a key role in the projects at Lincoln Investment Management," where the petitioner worked until shortly before the petition's filing date, and that the petitioner "will be working as an Assistant Vice President and Senior Quantitative Research Analyst in the Taxable Bond Department" of [REDACTED]. Counsel asserts that the petitioner's benefit to the national interest arises from

"research on technological progress, productivity and economic growth" and "research on financial investment and development of risk management."

Several witness letters accompany the petition. Dr. [REDACTED] [REDACTED] Second Vice President and Senior Derivatives Analyst at [REDACTED] states:

I have seen very few individuals who possess skills and range of expertise as [the petitioner] does, ranging from productivity growth, international trade, to modern financial innovation theory and performance evaluation. Her strong quantitative, statistical background and superior modeling skills are also evidenced by high-quality publications in prestigious peer-reviewed journals. . . .

[The petitioner's] contribution is a key factor for the improvement of [REDACTED] [REDACTED] performance and competitiveness in this highly competitive market. . . . The models and the strategic plans she has developed for marketing direction and strategy that provide better insights into the effects of this innovation on customers' benefit help decision makers and marketing managers provide better products and services. The implementation of these models reinforces the existing market competition and stimulates innovation, which ultimately induces immeasurable benefits to all Americans and the U.S. economy.

Dr. [REDACTED] a policy analyst for [REDACTED] states:

In her master thesis, [the petitioner] quantified the real effect of policy on productivity, which . . . is crucial for policy makers to monitor the magnitude effects of monetary policies. Her contributions were to identify policy as an endogenous factor, contrast to conventional exogenous treatment in previous literature, to jointly estimate a political model with the aggregate agricultural production function across countries and over time, and to identify a WORLD BANK index to capture the policy effect. . . .

The articles she has published demonstrated significant original research and are evidences of her outstanding work and reputation.

Dr. [REDACTED] a research economist with [REDACTED] states that the petitioner "made significant contributions in explaining the real effects of government policy on productivity over different stages of economic development." [REDACTED] Associate Professor, [REDACTED] formerly of [REDACTED]

[REDACTED] states that his collaborative study with the petitioner led to a presentation "at the meetings of the American Agricultural Economics Association . . . the most important meetings worldwide for our profession," and to a published article "in the flagship journal of the US and world economics profession, the *American Journal of Agricultural Economics*. . . . I regularly receive international requests for this study and [the petitioner] has certainly received international academic attention with this work."

Professor [REDACTED] of the [REDACTED] at [REDACTED] directed the petitioner's doctoral research pursuant to an agreement between [REDACTED] and [REDACTED]. Prof. [REDACTED] states:

In her dissertation, [the petitioner] worked on the challenging performance evaluation problem for financial industry and proposed an alternative method of assigning risk to strategies. She introduced a [REDACTED] estimation procedure for the Stochastic Discount Factor. The significance of [REDACTED] is to combine no distribution assumption with no functional form assumption which makes the estimation procedure significantly more general and more accurate. To my knowledge, she is the first person to create such a concept and it can be applied to nowadays more and more complex financial innovation areas.

Professor [REDACTED] of [REDACTED] formerly of [REDACTED] states that the petitioner's dissertation has "phenomenal" implications. Several other witnesses, with varying degrees of connection to the petitioner, offer similar statements to the effect that the petitioner's academic research and her work for [REDACTED] have significant national implications.

The petitioner has submitted further letters in response to a request for additional evidence. [REDACTED] "a Vice President at [REDACTED] working as a quantitative risk methodologist," states "I got to know [the petitioner] and her work through several professional conferences" and that the petitioner's "research for Mortgage Backed Securities . . . [is] a significant contribution to the area of risk management."

Dr. [REDACTED] Financial Engineer in the Portfolio Analysis Group at [REDACTED], states that the petitioner "is an established researcher with great achievements in the areas of financial risk management and financial innovations." Dr. [REDACTED] Assistant Professor at [REDACTED] asserts that the petitioner's publication record demonstrates the rarity of her talent, and that the petitioner's research can

significantly benefit the U.S. economy. Other witnesses from various academic and financial institutions offer similar attestations.

The director denied the petition, stating that while the record shows that the petitioner is "very competent" in her field, it does not establish past or prospective national benefit arising from the petitioner's work. The decision contained minimal discussion of the petitioner's work.

On appeal, the petitioner submits additional documentation to establish the reputations of several of the witnesses, as well as documentation prepared by the petitioner and collaborators for LNC. In a brief, counsel discusses previously submitted evidence and contends that this evidence supports a finding in the petitioner's favor.

Upon consideration of the evidence offered, this office is persuaded by the testimony of the wide range of expert witnesses in this matter. The available evidence and documentation indicates that, in the "real world" of finance as well as in academia, the petitioner's work has had an impact which substantially exceeds what could normally be expected of a similarly trained and experienced professional in her field. The evidence is persuasive that the national interest would best be served by ensuring the petitioner's continued participation in the U.S. financial industry.

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 field of endeavor, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes that the financial community recognizes the significance of this petitioner's research rather than simply the profession as a whole. The benefit of retaining this alien's services outweighs the national interest which is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has 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 sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.