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Immigration and Naturalization Service

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

[redacted]

File: [redacted] Office: Nebraska Service Center Date: JAN 21 2003

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:
This is the decision 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 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 that 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Elizabeth Hayward

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, Nebraska 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 an alien of exceptional ability in business. The petitioner seeks employment as a Foreign Exchange Risk Manager for LFG, a Chicago brokerage firm engaged in the management of investment portfolios. 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.
> >
> > > (i) Subject to clause (ii), 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.
> > >
> > > (ii) Physicians working in shortage areas or veterans facilities.

The petitioner possesses a Master of Business Administration degree from St. John's University in New York. The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree or an alien of exceptional ability. 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 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, 22 I&N Dec. 215 (Comm. 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.

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 this project must also qualify for a national interest waiver. 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 sought. 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 note 6.

Along with documentation pertaining to the U.S. and global financial markets and the petitioner's institutional clients, the petitioner submitted several witness letters. Michael Segal, President of Lamborn Securities, Inc., the asset management and securities brokerage company that employed the petitioner from 1992 to 1998, states:

> I have known [the petitioner] since he began his employment at the Lamborn Group. [The petitioner] has been instrumental in analyzing and improving the methods of evaluating trader's positions and their level of risk in client's portfolios. The methods that [the

> petitioner] evaluated and improved upon were the allocations of assets and balancing portfolio risk to prevent world financial disaster in the financial industry.
>
> He worked closely with foreign exchange dealers at major money center banks worldwide exerting his systems expertise in controlling the firm's currency risk exposure. This is a very technical, specialized area of risk management.

While the petitioner may have provided services benefiting his employer and its clients, the record contains absolutely no evidence to support Michael Segal's assertion that the petitioner's own allocation methods and risk management techniques were responsible for averting a "world financial disaster in the financial industry." The performance of financial services for a given client is of interest mainly to that particular client. The petitioner has offered no independent evidence to demonstrate the national impact of his contributions.

Mark Vaughn, Chief Operating Officer, LFG, states:

> As evidenced by the myriad of problems experienced within the financial industry in the United States over the past 20 years, Risk Management has become a vital ingredient for the continued health of the U.S. economy. Many of the current investment products offered to investors are highly complicated in terms of their potential risks to the issuer. People with the skills and focus of [the petitioner] are rare and highly valued in this field.
>
> [The petitioner] is also adept at coming up with innovative solutions to daunting problems. In particular, his work in the area of foreign exchange facilities management created a unique procedure which eliminates the risk that many major commercial banks had with their customers. This is a major contribution to our industry and one that is used by a great many banks and brokerage firms today.
>
> In summary, we feel privileged to have [the petitioner] in our current employ. His contributions are recognized daily — not only by us but also by every institution with which we have relationships.

Mark Vaughn, however, offers no listing of the "great many banks and brokerage firms" that directly utilized the petitioner's procedure. We further note that the record contains no documentation from bank executives or industry leaders from these various outside institutions crediting the petitioner with "a major contribution" or verifying that their institutions employ the petitioner's specific procedure.

Mark Vaughn further states:

> [The petitioner's] area of expertise is 'risk management.' He possesses a unique ability to assess the risks in a wide variety of investment and trading programs. Further, he then designs risk management programs to reduce and manage those risks.

> [The petitioner] holds two masters degrees; one from the University of Karachi and the other from St. John's University in New York. His field of study was finance, management and economics. His educational training directed him into this little understood field and provided him with solid preparation for the work he performs for his current employer.

We note, however, that any objective qualifications necessary for performance of the petitioner's position can be articulated in an application for alien labor certification. Pursuant to *Matter of New York State Dept. of Transportation*, an alien cannot demonstrate eligibility for the national interest waiver simply by establishing a certain level of training or education that could be articulated on an application for a labor certification. Instead, the petitioner must demonstrate a past history of significant accomplishment that distinguishes him from other competent risk managers.

Phillip Fondren, Global Director of Foreign Exchange, LFG, states:

> During the years in which I was President of Lamborn Asset Management, Inc., [the petitioner's] work as the Director of Research resulted in major contributions to the financial services industry. In particular, his unique application of statistical analysis in assessing the viability of specific money management companies in overall investment portfolios utilizing Modern Portfolio Theory has added to the body of work done in this field by some very esteemed academicians and economists. He seems to possess an innate understanding of the risks inherent in a wide variety of investment and trading programs.
>
> In addition, [the petitioner] has participated in the development of 'risk management programs' that are designed to reduce overall portfolio risk for investors. Hence, he has developed a reputation in the industry as an expert in the field of Risk Management.

The petitioner in this case has offered no evidence indicating that the statistical analysis applications he developed have garnered the attention of any "esteemed academicians" or economists. Nor has the petitioner provided evidence that his expertise in risk management is recognized throughout the financial industry beyond his employing institutions or their clients.

Phillip Fondren further states:

> When I founded a Management Consulting firm — Altra Management Services, Inc. — my goal was to help money management companies become more efficient in their trading of foreign currencies. Still working as Director of Research with Lamborn Asset Management, [the petitioner] helped to devise for Altra one of the more innovative programs ever developed in the foreign exchange trading business. Counterparty risk is of great concern to all major commercial and investment banks. [The petitioner's] efforts in this area produced a process whereby certain institutional customers were able to obtain much larger trading facilities with these banks due to a large reduction in risk. This is a major contribution to the financial services industry and the process is now used extensively throughout the market.

The petitioner's counterparty risk program may have benefited Altra Management Services and their clients, but the impact on the U.S. financial services industry has not been demonstrated. Other than the assertion of Phillip Fondren, the petitioner has offered no evidence showing that his program is "used extensively throughout the market." For example, there is no evidence confirming that other financial institutions beyond the petitioner's clients utilize the petitioner's program or that distinguished financial publications have hailed the petitioner's method as a "major contribution."

The remainder of Phillip Fondren's letter is devoted to how the petitioner has served LFG. Phillip Fondren states:

> An example of the extraordinary skills [the petitioner] has brought to this industry is the profound effect his efforts have had on the business of his current employer.
>
> * * *
>
> Although LFG's customer business was extensive and they consistently made profits in their core dealing business, I found that 'risk management' was virtually non-existent. It was resulting in the loss of perhaps hundreds of thousands of dollars per year. The problem was so severe, that I turned to [the petitioner] for help.
>
> First coming to Chicago in a consulting capacity and then finally agreeing to join the firm, [the petitioner] quickly gained control of the situation and stopped the losses. In fact, the position management activities which are an integral part of his job as Director of Risk Management are now producing regular and predictable profits every month.

Simply stating that the petitioner provided beneficial services to a given employer or client fails to demonstrate his national impact and does not persuasively distinguish the petitioner from others in his field.

The petitioner also submitted brief letters from Carl Napolitano, Chairman of Soundview Capital Management, and Gerald Laurain, Vice President of ABN-AMRO, Inc. Their letters briefly commend the petitioner for his work habits and educational background, but they offer no specific information as to how the petitioner has significantly influenced the financial industry or the field of risk management.

Several of the petitioner's witnesses offered statements discussing the overall importance of risk management. Included among the petition's supporting documents were several articles stressing the undoubted importance of effective foreign exchange risk management. We note here that none of these articles specifically mentioned the petitioner or his employers. Pursuant to *Matter of New York State Dept. of Transportation*, the overall importance of a given occupation is insufficient to demonstrate eligibility for the national interest waiver. While the Service acknowledges the financial benefits arising from effective risk management, eligibility for the national interest 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 occupation is so important that any alien qualified to work in that field must also qualify for a national interest waiver. By law, advanced degree professionals and aliens of exceptional ability are generally required to have a job offer and a labor certification. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d 1289, 1295 (5th Cir. 1987). By asserting that the petitioner's work in determining economic risk factors inherently serves the national interest, counsel for the petitioner essentially contends that the job offer requirement should never be enforced for the petitioner's occupation, and thus this section of the statute would have no meaningful effect. Congress plainly intends the national interest waiver to be the exception rather than the rule.

The director requested further evidence that the petitioner has met the guidelines published in *Matter of New York State Department of Transportation*. In response, the petitioner submitted copies of documentation previously submitted.

The director denied the petition, stating that the petitioner failed to establish that a waiver of the requirement of an approved labor certification would be in the national interest of the United States. The director indicated that the foreign exchange risk management services provided by the petitioner would be "so attenuated at the national level as to be negligible." The director also stated: "[T]he record does not establish that the alien petitioner has yet established a history or pattern of significant contributions to his field outside of his employers."

On appeal, counsel for the petitioner states: "The alien petitioner clearly presents a significant benefit to the field of endeavor as testified by a number of experts."

In this case, the petitioner's witnesses consist entirely of individuals with direct ties to the petitioner. These individuals describe the petitioner's expertise and value to his current and former projects, but their statements do not demonstrate that the beneficiary's work has attracted significant attention from throughout the financial services industry or field of risk management. Letters from those close to the petitioner certainly have value, for it is those individuals who have the most direct knowledge of the petitioner's specific contributions to a given project. It remains, however, the petitioner's witnesses became aware of his work because of their direct contact with the petitioner; their statements do not show, first-hand, that the petitioner's work is attracting attention on its own merits, as we might expect with breakthrough risk management techniques. Independent evidence that would have existed whether or not this petition was filed, such as articles published in financial journals showing that the petitioner's work has attracted significant attention, is more persuasive than subjective statements from individuals selected by the petitioner.

The petitioner's individual impact on the national interest of the U.S. appears negligible. We do not dispute that effective foreign exchange risk control management techniques are beneficial to U.S. companies and the national economy, but the petitioner in this case has not shown any

measurable influence on the financial industry extending beyond his immediate employers or their direct clients. Witnesses assert that the petitioner has developed risk management programs saving his employers and their clients "hundreds of thousands of dollars," and they discuss the general economic benefits resulting from the petitioner's foreign exchange risk control methodologies, but they do not indicate what level of national benefit can be ascribed specifically to the petitioner as opposed to the other parties involved or general global economic trends. While the petitioner's projects have arguably been of some economic benefit to certain U.S. financial services companies, assessing foreign currency risk and ensuring proper asset allocations for one's clients are routine duties expected of a foreign exchange risk manager.

Counsel further states that the petitioner's "previous academic and work experience illustrates his exceptional ability in managing risk investments." Any objective qualifications necessary for performing the petitioner's occupation, such as academic and work experience, can be articulated in an application for alien labor certification. In accordance with the statute, exceptional ability is not by itself sufficient cause for a national interest waiver. The benefit that the petitioner presents to his field of endeavor must greatly exceed the "achievements and significant contributions" contemplated in the regulation at 8 C.F.R. 204.5(k)(3)(ii)(F). The petitioner must establish that he will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. It cannot suffice to state that the alien possesses useful skills, or a unique background. As noted previously, 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. The petitioner must show that he has already significantly influenced his field of endeavor and that his past record demonstrates an ability to serve the national interest to a greater extent than other risk control managers.

Simply put, the petitioner has not distinguished himself from other foreign exchange risk control managers whose companies manage currency risk for their clients in financial markets throughout the world. The evidence provided does not reflect that the petitioner has attracted significant recognition beyond his employers or their clients, or that the petitioner's accomplishments are of demonstrably greater value than the achievements of other risk control managers employed in comparable positions throughout the U.S. financial services industry.

In sum, the available evidence does not persuasively establish that the petitioner's 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.

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 the 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.