B2

U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to prevent clearly unwarranted invasion of personal privacy.

[redacted]

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

File: WAC 99 206 50470 Office: California Service Center Date: 16 SEP 2002

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER:

[redacted]

Public Copy

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. The petitioner filed an untimely appeal which the director treated as a motion to reopen. The director affirmed the denial of the petition on motion, and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in education and business. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that the beneficiary has sustained national or international acclaim at the very top level.

This petition, filed on July 20, 1999, seeks to classify the petitioner as an alien with extraordinary ability as a Professor of Finance. At the time he filed the petition, the petitioner was an Assistant Professor of Finance at the University of Arizona. Counsel states that the petitioner's research explores the functioning of capital markets and how both internal and external factors affect market prices.

The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, counsel claims, meets the following criteria.

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

In an occupation where "judging" the work of others is an inherent duty of the occupation, such as an instructor, teacher (including graduate student teaching assistants), professor or editor, simply performing one's job-related duties demonstrates competency, and is not evidence of national or international acclaim.[1] Furthermore, the judging must be on a national or international level and involve other accomplished professionals in the research field. For example, judging tenured research professors carries greater weight than judging doctoral candidates.

The petitioner submits two letters confirming his role as a reviewer and evaluator of the work of other members of the academic finance profession. Dr. [redacted] Professor of Finance, Arizona State University, states:

> I was Program Chair for Corporate Finance for the 1996 Meeting of the Financial Management Association. The FMA meeting, which is the largest meeting in finance, attracts 5000-6000 academics and practitioners each year. My portion of the program consisted of approximately 150 papers in 50 sessions. [The petitioner] was a member of my program committee. He was an active, energetic, credible evaluator of paper submissions. Of the several reviewers I worked with, [the petitioner] was among the most thoughtful and thorough. [The petitioner] has participated regularly as a reviewer and evaluator for the FMA. He was a program committee member in 1996 and 1998. In addition, he was a session chair in 1996 and 1998 and was a discussant in 1994, 1995, 1996, and 1998. On top of all that, [the petitioner] presented papers on the FMA program in 1997 and 1999. I should also note that [the petitioner] serves as a referee for prominent journals, including the *Financial Review* (published by the Eastern Finance Association) and the *Journal of Business and Economic Statistics* (published by the American Statistical Association).

---

[1] This is true with all duties inherent to an occupation. For example, publication is inherent to researchers. Thus, the mere publication of scholarly articles cannot demonstrate national acclaim. The petitioner must demonstrate that the articles have garnered national attention, for example, by being widely cited.

[redacted] Head, Department of Finance, College of Business and Public Administration, University of Arizona, states:

> For the past nine years I have been an associate editor of *The Journal of Business and Economic Statistics*. I have asked [the petitioner] to serve as a referee on two occasions in this capacity. The first of these was a paper about the predictability of the returns of newly public common stocks (IPOs), which [the petitioner] reviewed in November 1995. This paper was submitted to *The Journal of Business and Economic Statistics* by a Finance professor at the University of Texas at Arlington. [The petitioner's] review was careful and authoritative. He used Monte Carlo analysis to demonstrate that the technique that the paper used to test predictability was inappropriate to the task at hand. This advice was passed along to the author, and we (i.e., the editorial staff at the journal) decided to reject the paper accordingly.
>
> The second instance involved a paper that was submitted to the *Journal* by a Statistics professor at New York University and a Finance professor at the University of Houston. [The petitioner] gave me his review in May 1996. This paper involved developing a new metric to compare the performance of various portfolios. Once again [the petitioner's] review was clear, concise, and demonstrated a logical flaw in the authors' reasoning. Again, we passed his advice along to the authors and rejected the paper on the weight of his recommendation.

We find that the petitioner's evidence is sufficient to minimally satisfy this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

Dr. [redacted], Professor of Finance, Arizona State University, states:

> On the basis of my long association with [the petitioner], as well as my familiarity with his high-quality research, it is my opinion that [the petitioner] will continue to influence both the theory and practice of finance and, correspondingly, the welfare of the American economy. [The petitioner] is a valuable resource to this country, and I am quite confident that granting him a "green card" would serve the national interest of the United States.
>
> My association with [the petitioner] began while I was a faculty member and [the petitioner] was a Ph.D. student at the University of Utah. I taught [the petitioner] in several of his courses while he was a beginning Ph.D. student. In addition, [the petitioner] worked for me as my research assistant for three years and I was the chair of his dissertation committee. Quite simply, at that time [the petitioner] was the best Ph.D. student I had come across since I had left Stanford University to enter academia. Since [the petitioner] received his Ph.D. in Finance in 1993, he and I have continued to do joint research on important issues in Finance. Thus, I am well-acquainted with [the petitioner's] general abilities and qualifications.

* * *

[The petitioner] has been studying the functioning of capital markets in terms of the ways institutional investors affect how inside information comes to be impounded in market price. This is an extremely important issue because it is on the basis of market prices that corporate managers make investment decisions. Every year billions of dollars are invested in property, plant, and equipment, and whether those decisions are good ones depends on how well capital markets work. Furthermore, institutional investors control trillions of dollars invested in mutual funds, pension funds, and other vehicles. The quality of decisions by institutional investors affects the welfare of millions of American citizens.

A second research advance by [the petitioner], in collaboration with [myself] and Professor [redacted] at Utah, also addresses asset valuation in capital markets. In particular, this work delineates how noise from the economic environment affects the way assets are priced. This contribution is already used by practitioners to price financial assets.

A third research contribution that is likely to have important implications is [the petitioner's] work with me on the value of mutual funds. We find that particular methods of compensating mutual fund managers can lead to large increases in mutual fund performance. To the extent these changes are implemented, millions of holders of mutual fund shares can expect to benefit. This work was published this year in the June issue of the *Journal of Finance*.

I should note further that [the petitioner] has other, equally-important, work in progress, but I won't describe it here. Suffice it to say that my forecast is for a long and extremely productive research career. Furthermore, [the petitioner's] work will have substantial practical impact, will be important for American college and MBA students, and will inform important U.S. policy decisions.

I should also add that [the petitioner] is a skilled educator. [The petitioner] is a dedicated and rigorous teacher. He seems able to explain abstract concepts clearly and is able to apply theory to real situations. Few others show as much interest and dedication in the classroom.

Dr [redacted] Assistant Professor of Finance, Portland State University, states:

My association with [the petitioner] began while I was a Ph.D. student at the University of Utah. I maintained my association with [the petitioner] when I left Utah to become a Faculty member at Texas A&M University and later when I joined the faculty at Portland State University. On the basis of my long association with [the petitioner], I believe he is a valuable resource for the U.S. economy and highly recommend him for permanent U.S.

resident status.

In my opinion, [the petitioner's] research agenda will have important implications for financial markets and the U.S. economy. His published papers in the area of institutional investors and closed-end investment companies deal with important issues about the structure of financial markets. [The petitioner's] research on institutional investors is of particular relevance since institutional investors are the most important type of investor in the U.S. economy and control trillions of dollars invested in mutual funds, pension funds, and other investment vehicles. I believe [the petitioner's] research will have an impact on the quality of decisions by institutional investors and thus will affect the welfare of millions of American citizens.

The contribution of [the petitioner's] research is measured by the quality of the journals in which his publications have appeared and, in my opinion, will continue to appear. His papers published in domestic finance journals include a publication in the *Journal of Financial and Quantitative Analysis* (on equilibrium pricing under parameter uncertainty) and another in the *Journal of Finance* (fund advisor compensation in closed-end funds), two of the top-four U.S. finance journals. In addition, he has an important paper under review at another top-four journal, the *Review of Financial Studies*, and another paper at the *Journal of Finance*.

Furthermore, [the petitioner] has been an active participant at one of the most important financial conferences, the Financial Management Association meetings, and by doing so he has helped breach the gap between academic and practitioner-oriented research. Since 1993, [the petitioner] has presided over several sessions, has discussed several papers, and has been a member of the program committee that evaluates the papers that are selected for presentation at the conference.

Dr. [redacted] Assistant Professor of Finance, Oklahoma State University, states:

I met [the petitioner] when I was a Ph.D. student at the University of Arizona and enrolled in one of his graduate seminars. I maintained contact with [the petitioner] when I left Arizona to take a faculty position at the University of Wisconsin-Oshkosh and wrote my Ph.D. dissertation under his supervision. [The petitioner] and I are currently collaborating on research that is under peer revision at the *Journal of Finance*, one of the top three academic journals on the field of financial economics. Next year, I'll be assuming a faculty position at Oklahoma State University and look forward to a long and lasting relationship with [the petitioner].

I believe [the petitioner] is an invaluable resource for the U.S. economy. His published papers on the area of institutional investors and asset pricing examine important issues about the structure of financial markets in the U.S. economy. In particular, I believe [the petitioner's] research will have an impact on the quality of decisions made by institutional investors when investing the wealth of millions of American citizens.

Professors [redacted] and [redacted] of the University of Arizona discuss the petitioner's publication of scholarly articles and his involvement in the Financial Management Association as a peer reviewer/referee.

[redacted] Urrutia, Vice Minister of Foreign Affairs and International Cooperation for El Salvador, describes the petitioner as a "respected economist." He briefly mentions the petitioner's publications and academic accomplishments as a student in El Salvador. University study is not a field of endeavor, but, rather, training for future employment in a field of endeavor. Student accomplishments may place the petitioner among the top students at his particular school or university, but offer no meaningful comparison between the petitioner and the most experienced financial professors/researchers in the field.

The classification sought by the petitioner requires him to establish that he has attained national or international acclaim for his contributions of major significance to the field. The individuals offering letters of support for the petitioner consist of two of the petitioner's supervisors from the University of Arizona, a research collaborator from Arizona State University (who formerly taught the petitioner at the University of Utah), a fellow alumnus from the University of Utah, a Vice Minister for Foreign Affairs for El Salvador, and a former student of the petitioner. The letter from [redacted] of Northeastern University relates only to a job offer and offers no information regarding the petitioner's specific contributions of major significance.

The petitioner's witnesses credit him with studying the functions of capital markets, the development of an asset valuation method, conducting a study on how mutual fund manager compensation influences fund performance (this study had not yet been published at the time of filing), the authorship of scholarly articles, and being an excellent teacher. The petitioner's research efforts, while commendable, do not rise to the level of a contribution of major significance. The petitioner, for example, submits no evidence to demonstrate that any major financial services company has adopted his asset valuation method. Nor has the petitioner shown that his study on mutual fund manager compensation has attracted the attention of companies within the mutual fund industry, or financial benchmark firms such as Morningstar, Inc. or Lipper, Inc.

Drs. [redacted], and [redacted] all refer to the petitioner's authorship of articles published in various financial journals. However, the mere publication of six scholarly articles prior to the petition's filing do not demonstrate a contribution of major significance to the field. While the petitioner's research may have had practical applications, it can be argued that any article, in order to be accepted in a financial journal for publication, must offer new and useful information to the pool of knowledge. It does not follow that every researcher whose scholarly articles are accepted for publication has made a major contribution. Of far greater importance in this proceeding is the importance to the field of the petitioner's advances and discoveries.

We note that the letters from Professors [redacted] and [redacted] contain several identical

statements. For example, in referring to journals that have published the petitioner's articles, both individuals state: "Their editorial boards have included Nobel Prize winners, and the influence of papers published in those journals extends beyond the United States." As yet another example, both individuals state: "...[the petitioner's] scholarly work is original, of excellent quality, and a major contribution to the field of finance that would benefit the welfare of the United States." It is acknowledged that Professors [redacted] and [redacted] lent their support to this petition, but it remains that they did not independently choose the wording of their letters and therefore their specific assertions carry diminished weight.

The petitioner has not shown that his research, to date, has consistently attracted significant national or international attention from prominent independent researchers or financial institutions. The petitioner must demonstrate not only that his studies are important to his research colleagues and collaborators in Arizona, but throughout the financial industry. It should be noted that the petitioner has failed to provide a citation history of his published works. Without evidence reflecting independent citation of his articles, we find that the petitioner has not significantly distinguished his published findings from those of other researchers in the field. It can be expected that if the petitioner's published research were truly significant, it would be widely cited or reported on in the financial media. We will further address the petitioner's published works under a separate criterion.

Section 203(b)(1)(A)(i) of the Act requires extensive documentation of sustained national or international acclaim. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. We note that the record reflects little formal recognition or awards for the petitioner's research, arising from various groups taking the initiative to recognize the petitioner's contributions, as opposed to private letters solicited from selected witnesses expressly for the purpose of supporting the visa petition. Independent evidence that would have existed whether or not this petition was filed is more persuasive than the subjective statements from individuals selected by the petitioner. It should be noted that the Service is not questioning the credibility of the petitioner's witnesses, but looking for evidence that the petitioner's research has impacted the field beyond his direct acquaintances. An individual with sustained national or international acclaim should be able to produce ample unsolicited materials reflecting that acclaim.

Several of the testimonial letters, such as the one from Dr. [redacted] speculate on the future promise of petitioner's research. [redacted] predicts: "[The petitioner's] research agenda will have important implications for financial markets." Similarly, Dr. [redacted] notes that the petitioner's research "will have an impact on the quality of decisions made by institutional investors." These descriptions support the director's conclusion that the petitioner has not yet risen to the top of the financial research field. The petitioner seeks a highly restrictive visa classification, intended for aliens already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time.

The evidence submitted fails to demonstrate that any of the petitioner's studies have garnered national or international renown in the financial research field. If the petitioner's work is not widely praised outside of his personal acquaintances, then it cannot be concluded that he enjoys sustained national or international acclaim as one who has reached the very top of his field. While the statements from the petitioner's colleagues are useful in detailing his activities as a professor, they have failed to demonstrate the petitioner's lasting or wide-ranging impact as a financial researcher that is critical to a demonstration of sustained national or international acclaim.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner submits evidence of his co-authorship of an article published in the Journal of Finance in June 2000. This evidence came into existence subsequent to the petition's filing. See Matter of Katigbak, 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

Counsel states that the petitioner's publication in "top finance journals" satisfies this criterion. The record contains no evidence that the presentation or publication of one's work is a rarity in petitioner's field, nor does the record sufficiently demonstrate that independent researchers have heavily cited or relied upon the petitioner's work in their research.

The Association of American Universities' Committee on Postdoctoral Education, on page 5 of its Report and Recommendations, March 31, 1998, set forth its recommended definition of a postdoctoral appointment. Among the factors included in this definition were the acknowledgement that "the appointment is viewed as preparatory for a full-time academic and/or research career," and that "the appointee has the freedom, and is expected, to publish the results of his or her research or scholarship during the period of the appointment."

Thus, this national organization considers publication of one's work to be "expected," even among researchers who have not yet begun "a full-time academic and/or research career." This report reinforces the Service's position that publication of scholarly articles is not automatically evidence of sustained acclaim; we must consider the research community's reaction to those articles. When judging the influence and impact that the petitioner's work has had, the very act of publication is not as reliable a gauge as is the citation history of the published works. Publication alone may serve as evidence of originality, but it is difficult to conclude that a published article is important or influential if there is little evidence that other researchers have relied upon the petitioner's conclusions. Frequent citation by independent researchers demonstrates more widespread interest in, and reliance on, the petitioner's work.

The record contains no evidence that other researchers have cited the petitioner's articles. The petitioner's authorship of six published articles may demonstrate that his research efforts have yielded some useful and valid results; however, the impact and implications of the petitioner's

findings must be weighed. The record fails to demonstrate that the petitioner's published works have garnered significant attention from independent researchers throughout the financial industry. In sum, the petitioner has failed to demonstrate that his published works have earned him, individually, national or international acclaim.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

In order to establish that the alien performed a leading or critical role for an organization or establishment with a distinguished reputation, a petitioner must establish the nature of the alien's role within the entire organization or establishment and the reputation of the organization or establishment. Where an alien has a leading or critical role for a section of a distinguished organization or establishment, the petitioner must establish the reputation of that section independent of the organization as a whole.

In response to the director's request for evidence, counsel cites the letter from Professor [redacted] the only evidence relevant to this criterion. The letter briefly mentions the petitioner's participation as a reviewer and program committee member for the Financial Management Association. We note that the petitioner's involvement with the Financial Management Association as a judge of the work of others was previously addressed under a criterion that the petitioner has already met. The ten criteria are intended to be separate and distinct from one another. Therefore, the petitioner's involvement with the Financial Management Association cannot fulfill this second criterion without clear evidence that the petitioner has performed a leading or critical role within the association. The single witness letter from Professor Coles offers insufficient detail regarding the petitioner's role in relation to others involved with the Financial Management Association.

On appeal, we note that the petitioner does not contest the director's finding that he failed to satisfy this criterion. The director stated: "The letters [provided by the petitioner] do not show how the self-petitioner has performed in the leading or critical role."

The petitioner has served as an Assistant Professor in the Department of Finance at the University of Arizona since obtaining his Ph.D. in Finance in 1993. A review of the documentation provided reveals no evidence to establish that the petitioner has ever supervised or overseen other faculty at the University of Arizona. Furthermore, the record does not indicate the extent to which the petitioner has exercised substantial control over research groups or departmental decisions at the university. We note that both of the petitioner's witnesses from the University of Arizona have held higher positions as either a department head or chairman. For example, Professor [redacted] is Head of the Department of Finance. This criterion, like all of the criteria, is intended to separate the petitioner from the majority of his colleagues in the field. Therefore, when determining the petitioner's eligibility, it is entirely appropriate to compare the petitioner to his two colleagues from the University of Arizona. The importance of their roles and responsibilities at the University of Arizona are far greater than those of the petitioner. The petitioner thus fails to satisfy this criterion.

Clearly, the petitioner's professional and educational acquaintances have a high opinion of the petitioner and his work. The petitioner's findings, however, do not appear to have yet had a measurable influence in the larger field. While several witnesses refer to the potential applications of these findings, there is no indication that these applications have yet been realized. The petitioner's work has added to the overall body of knowledge in his field, but this is the goal of all such research; the assertion that the petitioner's findings may eventually have practical applications does not persuasively distinguish the petitioner from other competent financial researchers.

It must be emphasized that merely submitting evidence intended to address at least three of the criteria is not necessarily sufficient to demonstrate that the petitioner has sustained national or international acclaim at the very highest level. The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. The petitioner has failed to demonstrate that he meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

As noted by the director, the petitioner has demonstrated an impressive career as an Assistant Professor of Finance. Review of the record, however, does not establish that the petitioner has distinguished himself as a financial researcher to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a professor/researcher of finance, but is not persuasive that the petitioner's achievements set him significantly above others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.