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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: AUG 19 2005
EAC 04 004 51287

IN RE: Petitioner: [redacted]
Beneficiary:

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)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner seeks classification of the beneficiary 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 with extraordinary ability. The director determined that the petitioner had not established that the beneficiary had achieved the sustained national or international acclaim requisite to classification as an alien of extraordinary ability.

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

> (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 into the United States will substantially benefit prospectively the United States.

The applicable regulation defines the statutory term "extraordinary ability" as "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). Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.* However, the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h) must depend on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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).

In this case, the petitioner seeks classification of the beneficiary as an alien with extraordinary ability as a researcher of financial equity markets. At the time of filing, the beneficiary was employed as the Director of Research for the petitioner, the New York Stock Exchange, Incorporated (NYSE). The petitioner submitted supporting documents including copies of the beneficiary's academic credentials, an excerpt from one published article co-authored by the beneficiary, excerpts from five unpublished manuscripts co-authored by the

beneficiary, evidence of the beneficiary's membership in one professional association, and letters of recommendation from the petitioner's Senior Vice President and seven other experts in the beneficiary's field. The director determined the record did not establish the requisite sustained acclaim of the beneficiary. On appeal, the petitioner submits a brief, a second support letter and supplementary evidence including ten additional recommendation letters. The majority of the evidence submitted on appeal arose after the petition was filed. In addition, many of the recommendation letters submitted on appeal discuss work of the beneficiary that was not presented until after the petition was filed. Consequently, we cannot consider this evidence. The petitioner must establish the beneficiary's eligibility at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(12), *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

We address the evidence submitted and the petitioner's claims in the following discussion of the regulatory criteria relevant to the petitioner's case.

(i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner claims the beneficiary meets this criterion through her designation as an "Outstanding Graduate" of Tsinghua University in China in 1992, her receipt of a Guang-Hua Fellowship from the Guang-Hua Foundation in 1993, and her obtainment of "Distinction in Ph.D. Studies" from the University of Utah in 1997. Yet the record contains no primary evidence of these purported honors. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Even if sufficiently documented, these accomplishments would not satisfy this criterion because they appear to be academic honors for which only students – not established researchers – are eligible.

The petitioner also claims the beneficiary meets this criterion by virtue of her receipt of an undergraduate teaching award in 2001 from Iowa State University. The record contains no primary evidence of this award. Yet even if documented, the award would not meet this criterion. Professor of Finance at Iowa State University (ISU) and the beneficiary's faculty mentor during her first year as an Assistant Professor at ISU, states that in 2001 the beneficiary "was honored as '*the October Teacher of the Month*' at Iowa State University as an outstanding teacher and educator," but does not explain the significance of this honor. While it may indicate the beneficiary's teaching skills, the award is apparently granted each month to a faculty member at ISU. This internal award granted by one academic institution is not a nationally recognized prize for excellence in the beneficiary's field.

The petitioner further claims that the beneficiary's receipt of two research grants from ISU meet this criterion. states, "in the Spring of 2001, [the beneficiary] won a very prestigious research grant from Iowa State University, '*the 2001-2002 Iowa State Research Initiation Grant*' . . . . In Fall, 2001, [the beneficiary] won '*the 2001 Iowa State University Computation Award*' . . . . This award is very prestigious and only given to those outstanding researchers who specialize in extensive empirical study." Again, the record contains no primary evidence of the beneficiary's receipt of these grants or corroborative evidence of the grants' purported prestige. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Id.* In addition, internal research grants awarded to the faculty of one academic institution do not reflect the recipient's national or international acclaim.

Finally, the petitioner claims the beneficiary meets this criterion through her "Outstanding Research Award" from the Pinhas Sapir Center for Development (Pinhas Center) in Israel in 1999. Avner Kalay, Professor of Finance at the University of Utah and the beneficiary's doctoral advisor, explains that he was the beneficiary's mentor while she conducted research at Tel Aviv University from 1997 to 1999. During that time, Professor Kalay states that he and the beneficiary "conducted a research project together that is closely related to the Tel Aviv Stock Exchange and the regional economy. . . . We have received an award from the prestigious Pinhas Center in 2000 for our outstanding research accomplishments." On appeal, the petitioner submitted a printout from the website of the Pinhas Center, which is part of Tel Aviv University and a letter from Professo Director of the Pinhas Center. Professo confirms that "the research project on: 'Continuous Trading or Call Auctions: Revealed Preferences of Investors at Tel Aviv Stock Exchange' conducted by Avner was financed by the Pinhas Sapir Center for Development, Tel Aviv University, during the years 1999-2000." Yet, neither this letter nor the printout explain the eligibility criteria or selection process for grants made by the Pinhas Center and the record is devoid of any other evidence that receipt of such a grant constitutes a nationally or internationally recognized prize or award in the beneficiary's field.

In sum, the record contains no primary evidence of six of the beneficiary's seven purported honors. The submitted evidence also does not establish that the beneficiary's joint receipt of a research grant from the Pinhas Center was a nationally or internationally recognized prize or award for excellence in her field. Consequently, the beneficiary does not meet this criterion.

(ii) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The petitioner claims the beneficiary meets this criterion through her membership in the Western Finance Association (WFA), the Eastern Finance Association (EFA), the European Financial Management Association (EFMA), the American Finance Association (AFA), the Financial Management Association International (FMA), the Market Microstructure Research Group of the National Bureau of Economic Research (NBER) and the Chinese Finance Association (TCFA).

The record contains no evidence of the petitioner's membership in the WFA, EFA, and EFMA or any evidence that outstanding achievements are prerequisite to membership in these three associations. Again, simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Id.* The petitioner submitted a printout from the website of the AFA, but no evidence of the beneficiary's membership in this association. Moreover, the submitted printout does not indicate that outstanding achievements are prerequisite to AFA membership. The printout states that the association has "over 8,000 members throughout the world," many of whom are faculty members at prestigious universities and some of whom have won the Nobel Prize in Economics. The printout does not, however, indicate that appointment at a prestigious university or receipt of the Nobel Prize is required (or even typical) of the majority of AFA members. Rather, the printout indicates that the association's "Society of Fellows" consists of "those members who have made a distinguished contribution to the field of finance." The record contains no evidence of the beneficiary's AFA regular membership or membership in the AFA Society of Fellows.

On appeal, the petitioner submits evidence of the beneficiary's membership in the TCFA. Seven support letters affirm the beneficiary's service on the TCFA Board of Directors and as Chair of the TCFA New York Chapter. A printout from the TCFA website and additional information submitted with the letter indicate

that the TCFA is a non-profit professional association whose mission "is to facilitate academic research, industry practice, and business development in the US and China." According to the printout, the TCFA is sponsored, in part, by the Asian Development Bank, the Ford Foundation, the National Science Foundation of China, and the World Bank and has approximately 600 members in the United States and abroad. Although the TCFA information accompanying letter states that the association's members "represent the most outstanding and accomplished professionals in the financial field," the record contains no documentation of the TCFA membership criteria or other evidence that outstanding achievements are prerequisite to TCFA membership.

Finally, the petitioner submits on appeal a letter from Professor of Economics and Finance at the University of California, San Diego and Director of the Market Microstructure Research Group of the NBER. Professor states, "The NBER Market Microstructure Research Group is an association comprised of approximately 50 of the leading scholars who do research on the microstructure of securities markets. Its members are drawn from both academia and industry from the US and from around the world. . . . [The beneficiary] is an extremely active and important member of the group who occupies a unique position (shared with only one other group member) as an academically-trained, Ph.D. researcher who is equally at home in real financial markets." Professor xplains that the group's members share "an interest in the process of price formation: how the trading activities of investors with different information and beliefs about security values interact and deliver market prices that inform us about both." Yet Professor Lehmann does not state the group's membership eligibility or selection criteria. The record contains an "Invited Participant List" from the May 16, 2003 NBER Market Microstructure Society Meeting which includes the petitioner in the list of 35 participants. The beneficiary is included in a similar list from the society's December 11, 2003 meeting that we cannot consider because it took place after the petition was filed. The petitioner must establish the beneficiary's eligibility at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N Dec. at 49. The petitioner also submitted a printout from the NBER website stating that the bureau is "a private, nonprofit nonpartisan research organization dedicated to promoting a greater understanding of how the economy works." The printout does not state the NBER membership criteria or selection process. The evidence indicates that the petitioner is a member of the Microstructure Research Group of NBER and participated in one meeting upon invitation (prior to filing this petition). While this invitation may reflect the beneficiary's inclusion in a selective group, the record does not persuasively demonstrate that outstanding achievements are prerequisite to membership in the NBER or its Market Microstructure Research Group. Accordingly, the beneficiary does not meet this criterion.

(iv) 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.

The petitioner did not initially claim that the beneficiary met this criterion. On appeal, the petitioner claims the beneficiary satisfies this category through her participation as a discussant of the work of other financial experts at various professional conferences. Pages six through nine of the petitioner's appellate brief contain a table of conferences that the beneficiary purportedly attended from 1998 through 2004. However, 12 of the 14 exhibits submitted under this criterion document the beneficiary's participation in conferences after the petition was filed and consequently cannot be considered. The petitioner must establish the beneficiary's eligibility at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. *Id.*

Only two of the relevant exhibits arose prior to filing. The first is a program from the Thirteenth Annual Asia-Pacific Futures Research Symposium held in Shanghai, China on February 27 and 28, 2003. The program lists the beneficiary as the discussant of a manuscript entitled "Competition, Fragmentation and Complementarity: The Case of Equity Index Futures versus E-Mini Equity Index Futures." The second document is a copy of the beneficiary's presentation for the October, 2002 FMA conference entitled "An Analysis of the Introduction of the Market Makers to the Jasdaq." Even if this evidence were sufficient to show the beneficiary's judgement of the work of others in her field, it alone would not meet this criterion. The beneficiary's critique of just two manuscripts in her field does not reflect the requisite sustained acclaim. On appeal, the petitioner explains that the beneficiary could not attend international conferences outside of the United States until obtaining an advance parole document in 2004. However, the petitioner listed 28 professional conferences or meetings that the beneficiary attended prior to 2004 (including five held in other countries), participation in which could potentially reflect the requisite sustained acclaim. Yet the petitioner submitted no documentation of the beneficiary's participation as a discussant at any of these meetings. Accordingly, the beneficiary does not meet this criterion.

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

The petitioner initially submitted eight recommendation letters and on appeal, submits an additional 11 letters written by the beneficiary's supervisors, colleagues and collaborators. While such letters provide relevant information about an alien's experience and accomplishments, they cannot by themselves establish the alien's eligibility under this criterion because they do not demonstrate that the alien's work is of major significance in his or her field beyond the limited number of individuals with whom he or she has worked directly. Even when written by independent experts, letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence of major contributions that one would expect of an alien who has achieved sustained national or international acclaim. Accordingly, we review the letters as they relate to other evidence of the beneficiary's contributions.

The following financial professionals and scholars wrote support letters for the beneficiary that were submitted with the petition: Chief Economist and Senior Vice President for the petitioner and the beneficiary's supervisor; Associate Professor and Deputy Associate Dean of the School of Economics and Management at Tsinghua University in Beijing, China and the beneficiary's former supervisor at the People's Bank of China; Executive Managing Director for GTJA Securities Company, Limited in Shenzhen, China[1] and the beneficiary's former supervisor at J&A Securities; Professor of Finance at the University of Utah School of Business and the beneficiary's doctoral advisor; James S. Schallheim, Professor of Finance at the University of Utah School of Business and a member of the beneficiary's doctoral dissertation committee; Professor of Finance and Department Chair at the University of Utah School of Business who also knew the beneficiary as a graduate student; , Professor of Finance at Iowa State University (ISU) and the beneficiary's former faculty mentor and colleague at ISU; and Visiting Academic Scholar at the United States Securities and Exchange Commission and a co-author and former colleague of the beneficiary at ISU.

[1] Director Qin's letter is written on the letterhead stationary of GuoTai J&A Securities and signed with his title as Executive Managing Director for this firm, yet Director Qin states, "At the time when I write this letter on behalf of [the beneficiary], I am the Deputy Chief Investment Office [sic] of GoldenState Securities." The record does not explain this discrepancy.

On appeal, the petitioner submits additional support letters from the following individuals: Managing Director and Senior Economist and the beneficiary's colleague at NYSE; Professor of Finance at Duke University who has known the beneficiary since 200 Executive Director of the Hong Kong Association of New York who has worked with the beneficiary on events organized by the Association and TCFA; Senior Vice President and Director of Research for Thomas White International, Limited who has worked with the beneficiary for the TCFA; Managing Director and Portfolio Manager at Fore Research and Management who has known the beneficiary as a colleague since 2002;[2] President of TCFA and Vice President of Global Structured Credit Markets at Citigroup, who has worked with the beneficiary for TCFA; Executive Director, Structured Products Group for Morgan Stanley Asia who has known the beneficiary for more than six years Director of China Asset Management at Lord, Abbett and Company, LLC who has known the beneficiary for more than three years; Managing Director and Senior Portfolio Manager for OppenheimerFunds who has known the beneficiary since she began working at NYSE; and Managing Director of Structure Finance Ratings for Standard and Poor's who has known the beneficiary since 2002.

Before coming to the United States, the beneficiary was employed as a financial economist at the People's Bank of China. Her former supervisor at the Bank, Professo explains that they worked together on "developing and designing . . . the first electronic inter-bank payment system in China." Professor explains that the beneficiary was "one of the three economists we had on the project . . . . [and] led her team to build a sophisticated statistical model and conducted 100 million times of simulation in inter-bank transactions." Professo further states that the beneficiary "developed a gravity-based statistical model to accurately estimate the future payment transaction flow between any two banks offices. . . . In addition, [the beneficiary] played an integral role in leading our team to conduct extensive research and in-depth analysis of payment system worldwide. . . . Her contribution in estimating the payment transaction volume and studying the inter-bank activities and financial institutions has provided a great support for us to make effective policies in designing and developing China's long-term electronic payment system." Yet the record contains no corroborative evidence that the beneficiary's work influenced the banking industry in China outside of the People's Bank or was in any other way recognized as a major contribution to her field by other Chinese financial experts.

The beneficiary subsequently worked as a senior securities analyst at J&A Securities in China from 1993 to 1994. Her former supervisor at this company, states that the beneficiary was "on the top of the Junior Analyst Lead Table in our firm for three seasons in a row. [Her] outstanding research work has made her become one of the 10 Star Analysts in our company in 1994." Specifically, the beneficiary "managed and instructed a software company to design and develop an effective information system that was specially suited for our company's business operations." She "develop[ed] a dynamic strategy of portfolio balancing" and made "an exceptional contribution to our daily investment operation." Director Qin explains that the beneficiary's work "also has had a lasting impact on the industry practice. Later that year, many companies in the industry realized the efficiency and economic value of the financial information system and the automatic stock-bond balancing investment process, and began to develop their own systems." However, the record contains no

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letter is unsigned. On page 20 of the appellate brief, the petitioner explains that "has been in Singapore since the Tsunami. We will provide her signed letter upon her return." To date, we have not received s signed letter.

corroborative evidence of any other companies that developed such systems in direct response to the beneficiary's work.

The record indicates that the beneficiary left China in 1997 to enroll in a doctoral program at the University of Utah. Professor the beneficiary's doctoral advisor, explains that the beneficiary's dissertation research on the Tel Aviv Stock Exchange was published in the *Journal of Finance*. The record contains an excerpt of an article entitled "Continuous Trading or Call Auctions: Revealed Preferences of Investors at the Tel Aviv Stock Exchange" that was published in the February 2002 edition of the *Journal of Finance*. Professo s the lead author of the article and the beneficiary is one of his two co-authors. Professor tresses that the beneficiary "did tremendous work in this project [and her] contribution made this research project a great success." Professor Kalay adds that "[w]e have received an award from the prestigious Pinhas Sapier Center in 2000 for our outstanding research accomplishments. Our findings and research results has [sic] also been cited in the Year Book of the Tel Aviv Stock Exchange." Professor further notes that the "study provided strong support to the Tel Aviv Stock Exchange for their decision to move large cap stocks as well as small caps stocks to the new trading system." As discussed above under the first criterion, the record affirms that Professor Kalay and the beneficiary received funding from the Pinhas Center for this research, but the evidence does not demonstrate that such funding constitutes a prestigious award. The record is also devoid of any evidence of the citation of this work in the Year Book of the Tel Aviv Stock Exchange or that the Exchange relied on this research when making their decision to move large and small cap stocks to the new trading system.

Professor Schallheim, also of the University of Utah, further explains that the beneficiary's "dissertation research about the optimal trading mechanisms has very valuable policy implications to many stock exchanges. . . . [The beneficiary] has shown empirically that investors prefer continuous trading in the sense that the continuous trading helps to improve market liquidity of the traded securities and thus attract investors." Professor Schallheim states that the beneficiary's work on the Tel Aviv Stock Exchange "gained much attention [and her] research has been presented in many seminars and international conferences." affirms that the beneficiary's research "won the respect of the financial community" and was presented at four "prestigious international financial conferences." The importance of this work is also noted by Pamela Moulton, Professor and Yet the record contains no evidence that the beneficiary's co-authored article on this topic has been cited by other financial professionals or scholars in their publications and the petitioner submitted no other documentation that the beneficiary's work in this area has been recognized as a major contribution to her filed in a manner consistent with the requisite sustained acclaim.

After obtaining her doctorate, the beneficiary became an Assistant Professor of Finance at ISU. Professor Chair of the ISU Department of Finance, notes that the beneficiary received two ISU research grants to support her work. He explains that the beneficiary "has conducted research on many issues that have significant implications for the US equity market growth and investor welfare." the beneficiary's former colleague at ISU, explains their joint research project on "how to accurately measure trading cost on the New York Stock Exchange and Nasdaq." According t the research suggests a new rule of measuring and estimating execution services that is more accurate than the "5-second trade-quote matching algorithm suggested by Lee and Ready (1992)." states, "Our research has received significant attention in the financial communities. [The beneficiary] and I have presented our research work in several international financial conferences." adds that their co-authored manuscript entitled "The Sensitivity of Effective Spread Estimates to Trade-Quote Matching Algorithms" is under publication review with the *Journal of Financial Quantitative Analysis*. The importance of this work and its practical application in the financial industry is also noted by Professor rofessor

Yang, and However, the article written by the beneficiary and Mr. Piwowar has not been published and the record contains no corroborative evidence of the beneficiary's presentation of this work at professional conferences.

The petitioner left ISU to work at the NYSE. In his first letter, plained that the beneficiary collaborated with him "on an important research project about market design and volatility. . . . We studied a group of firms that switched listing their stock in one market (Nasdaq) to a different market (NYSE) during the year of 2002. . . . [We] have found very significant changes in the patterns of how volatile stock prices are when stocks switch from one type of market to another. Moreover, the efficiency of the price mechanism seems to be affected as well. Our findings have implications for the development and regulations of the US capital market structure." The significance of this work is also discussed by Pamela Moulton, Professor Kyle, Dajiang Guo, The record contains a copy of a manuscript entitled "Market Structure, Fragmentation and Market Quality – Evidence from Recent Listing Switches" and co-authored by Mr. and the beneficiary. The copy submitted with the petition is identified as "First Draft: September 11, 2003." On appeal, the petitioner submits a later version of this paper identified as "This Draft: December 23, 2003," which we cannot consider because it was written after the petition was filed. The petitioner must establish the beneficiary's eligibility at the time of filing. *See* 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N Dec. at 49.

In his second recommendation letter submitted on appeal, states that this research was "first released by the NYSE to the financial industry in December 6, 2003," that his and the beneficiary's co-authored manuscript was ranked as one of the "Top Ten" research papers by the Social Science Research Network for 2003-2004; was cited in five media reports between December 4, 2003 and January 2005; was cited by NYSE CEO John Thain during his testimony to the Senate Banking Committee in August 2004; was cited in the NYSE 2003 Annual Year Book; and that he and the beneficiary have been invited to present their research at several prestigious institutions. We cannot consider this evidence of the impact of this research because it arose after the petition was filed. Similarly, we cannot consider the beneficiary's contributions to the 2004 NYSE Hybrid Market Design regulatory proposal or her co-authored manuscript with Pamela Moulton because the record indicates that these projects were also completed after the petition was filed. The petitioner must establish the beneficiary's eligibility at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. *Id.*

In his second letter, so discusses the importance of the beneficiary's research on execution quality and inter-market competition and the policy implications of market design. The beneficiary's work on the former topic is documented by a manuscript entitled "Public Disclosure and Private Decisions: The Case of Equity Market Execution Quality," which is co-authored by the beneficiary of the NYSE and Robert Jennings of Indiana University. The submitted copy of the manuscript is identified as "First Draft: December, 2002." explains that this paper "has provided a creative and high quality analytical study of order flow competition in the US equity market and made a strong impact to the field. The paper is also widely cited by other researchers in the financial market, and has been accepted for presentation by a number of prestigious national conferences and seminars. Currently the paper is in the final stages of review by the *Review of Financial Studies*." also notes the significance of this work, but the record contains no evidence that this article has been published and the petitioner provides no corroborative evidence of the manuscript's presentation at financial conferences or its citation by other researchers.

The beneficiary's work on the policy implications of market design is evidenced by a manuscript entitled "Is Penny Trading Optimal for the Closed-End Fund in China?" This paper is co-authored by the beneficiary and of the Shanghai Stock Exchange. The submitted copy of the manuscript is identified as "This draft: January 11, 2002." explains that based on this work, the beneficiary "made a recommendation to the China Securities Regulatory Commission (CSRC) to cut the tick size in the Chinese stock market for reducing the transaction cost for individual investors. The proposal was adopted by the Chinese regulatory authorities and implemented on March 3, 2003 on the Exchanges." The significance of this work is also noted by Professor However, the petitioner submitted no primary evidence that the beneficiary's recommendation was accepted by the CSRC and implemented on th Exchanges. The record is also devoid of any evidence that this work has been published, presented at professional conferences in the beneficiary's field, or otherwise recognized as a major contribution to her field (beyond the assessments of four of the submitted recommendation letters).

Beyond the scholarly significance of the beneficiary's work, the record indicates that her research findings also have practical applications for the following financial professionals (as discussed in their recommendation letters): Yet the record contains no evidence that the beneficiary's work has influenced or been applied by other financial industry professionals beyond these seven individuals in a manner reflective of the requisite sustained acclaim.

Finally, several letters explain that the beneficiary has made significant contributions to the exchange of business expertise between U.S. and Chinese professionals in the financial industry. Joseph Hu explains that the beneficiary's "work with the TCFA has influenced business development by US financial institutions in China. . . . It is tremendously beneficial for the US investors that [the beneficiary] works as a conduit through the New York Stock Exchange and TCFA to transmit the knowledge and experience in capital markets between the US and China." states that the beneficiary "and the TCFA board are working to introduce the current development and regulation in the U.S. debt capital market to China. [The beneficiary] has engaged in extensive studies and research on the topic and has worked with both US and Chinese institutions in developing exchanges with China." Wei Li opines that the beneficiary's "role in the Chinese Finance Association aids the US capital market and the New York Stock Exchange attracting [sic] Chinese counterparts as investors and as potential listing companies. also explains that the beneficiary "brings a unique perspective and understanding of the international capital markets and the needs and cultural issues confronting Chinese corporations. . . . [Her] research, knowledge and expertise give the New York Stock Exchange and U.S. financial institutions a competitive edge." Despite these favorable assessments, the record contains no corroborative evidence of the beneficiary's work in this area. For example, although several letters mention meetings and conferences organized by the beneficiary for TCFA, the record contains no documentation of any of these events that took place prior to the filing of this petition.

The record indicates that the beneficiary has conducted valuable research in her field and has co-authored one published article. The evidence does not demonstrate, however, that the beneficiary's work has been recognized as making major contributions to her field beyond the circle of her colleagues who have written the submitted support letters and in a manner reflective of the requisite sustained acclaim. Consequently, she does not meet this criterion.

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

The petitioner claims the beneficiary meets this criterion by virtue of her co-authorship of seven manuscripts. One of these papers was written after the petition was filed and cannot be considered. The petitioner must establish the beneficiary's eligibility at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N Dec. at 49. Of the remaining six manuscripts, the record contains evidence that only one has been published. This article is entitled "Continuous Trading or Call Auctions: Revealed Preferences of Investors at the Tel Aviv Stock Exchange" and was published in the February 2002 edition of the *Journal of Finance*. Many of the beneficiary's recommendation letters discuss the importance of this article (as noted above under the fifth criterion) and the prestige of the *Journal of Finance*, but the record is devoid of any evidence that this article has been cited in the scholarly or professional publications of other experts in the beneficiary's field. Co-authorship of just one published article does not demonstrate the sustained acclaim requisite to classification as an alien with extraordinary ability. Accordingly, the beneficiary does not meet this criterion.

(vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

As discussed above under the fourth criterion, the petitioner claims the beneficiary has presented her work at numerous professional conferences in her field. Documentation of such presentations could serve as comparable evidence of the beneficiary's eligibility under this category pursuant to 8 C.F.R. § 204.5(h)(4). However, the majority of the relevant evidence submitted arose after the petition was filed. Twelve of the 14 exhibits documenting the beneficiary's conference presentations are dated after the petition was filed on October 2, 2003 and consequently cannot be considered. The petitioner must establish the beneficiary's eligibility at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N Dec. at 49.

The record documents just two conference presentations made by the beneficiary prior to filing. The first is a program from the Thirteenth Annual Asia-Pacific Futures Research Symposium held in Shanghai, China on February 27 and 28, 2003. The program lists the beneficiary as the discussant of a manuscript entitled "Competition, Fragmentation and Complementarity: The Case of Equity Index Futures versus E-Mini Equity Index Futures." The second document is a copy of the beneficiary's presentation for the October, 2002 FMA conference entitled "An Analysis of the Introduction of the Market Makers to the Jasdaq." Professor Kalay, of the University of Utah, notes that the beneficiary "presented two of her research projects in the 2002 Financial Management Association annual meeting, and also has been invited to give discussions to two academic papers written by other scholars in October 2002.' [redacted] lso states that he and the beneficiary have presented their co-authored manuscript, "The Sensitivity of Effective Spread Estimates to Trade-Quote Matching Algorithms," at "several international financial conferences" such as the 2001 FMA Conference, the 2002 Eastern Financial Conference and the 2002 EFMA Conference. [redacted] of Thomas White International, Limited, also notes that the beneficiary "presented her research work and chaired an academic session" at the March 2002 conference of the Midwest Financial Association. Yet Professo [redacted] do not state that the beneficiary was a keynote speaker at any of these conferences or that her work was exceptionally well received by the conference participants.

[redacted] Executive Director of the Structured Products Group at Morgan Stanley Asia whose has worked with the beneficiary for the TCFA, explains that the beneficiary "played a lead role at the [1998 TCFA] Conference as a discussant and speaker," but the record contains no corroborative evidence of the beneficiary's participation at this conference. [redacted] also states that the beneficiary's "research on capital market and

competition was highlighted at TCFA's 9th annual conference in New York City in October 2002. . . . [The beneficiary] first spoke on the importance of currency issue to the future development in the United States and China and then introduced Professor a Nobel laureate. of Standard & Poor's, also discusses the petitioner's participation in the 2002 TCFA conference where she "chaired the luncheon session featuring the Nobel Prize recipient Professor I was impressed by [the beneficiary's] speech of how macroeconomic factors, such as currency exchange rate and interest rate, can affect the business opportunities between the US investors and China financial institutions. [Her] speech motivated conference participants to appreciate the importance of currency exchange rate and the business opportunities for the US investors in emerging markets, such as China." Yet the record contains no corroborative evidence of the beneficiary's participation in the 2002 TCFA conference or the purported appreciation of the importance of her speech by other conference participants.

The record documents only two presentations of the beneficiary's work at professional conferences and meetings in her field. The evidence submitted does not demonstrate that, at the time of filing, the beneficiary's presentations had influenced or garnered significant recognition by other experts in her field (beyond her recommenders) in a manner reflective of the requisite sustained acclaim. Accordingly, the beneficiary does not meet this criterion.

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

At the time of filing, the beneficiary was a Director of Research for the petitioner, the NYSE. On appeal, the petitioner explains that "[b]ased on her significant contribution, [the beneficiary] received a promotion to the level of Managing Director in 2004, confirming the recognition that she has received from the senior management of the New York Stock Exchange." We cannot consider the beneficiary's new position because it arose after the petition was filed. The petitioner must establish the beneficiary's eligibility at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(12), *Katigbak*, 14 I&N Dec. at 49.

The record shows that the beneficiary is one of three economists employed by the petitioner in its Research Division which consists of approximately 20 staff members. In his first letter submitted with the petition, Mr. explains that the beneficiary has contributed to NYSE research on market design and volatility in which she "has demonstrated her wide knowledge in the market microstructure theory, as well as her solid training in empirical research. Her contribution to the project is crucial to our success." also described the beneficiary as "very valuable as a professional colleague within the Research Department" whose continued employment at the NYSE "is crucial to the Exchange for maintaining research and business excellence." In his second letter submitted on appea describes additional contributions that the beneficiary has made to the NYSE since the petition was filed that we cannot consider. We also cannot consider description of the beneficiary's role at NYSE because cites examples of the beneficiary's work that were completed after the petition was filed. The petitioner must establish the beneficiary's eligibility at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. *Id.*

We do not dispute that the NYSE has a distinguished reputation. However, the record does not persuasively demonstrate that the beneficiary played a leading or critical role for NYSE at the time of filing. Some of the beneficiary's support letters discuss the significance of her role at NYSE and the record shows that the

beneficiary was invited to one meeting of the NBER Market Microstructure Society while employed at the NYSE (and prior to filing this petition). Yet the petitioner submitted evidence of the beneficiary's participation at just two professional conferences while employed by NYSE (and prior to filing this petition) and the record contains no other evidence that the beneficiary's role at NYSE reflected the requisite sustained acclaim at the time of filing.

The record also does not establish that the beneficiary meets this criterion through her role with TCFA. Although many of the support letters discuss the beneficiary's work for this organization, the record contains no corroborative evidence of her position with the association at the time of filing, no documentation of the TCFA events organized by the beneficiary prior to filing this petition, and no independent evidence that the TCFA has a distinguished reputation. Accordingly, the beneficiary does not meet this criterion.

(ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The Form I-140 lists the beneficiary's annual salary as $150,000. In the petitioner's initial brief, stated that the beneficiary "is compensated at an annual rate of $120,000. In addition, she is eligible to receive an annual bonus that could be as much as 16 – 20 % percent of her base salary." The beneficiary's payroll statements submitted with her Form I-485 show that as of September 4, 2003, she earned approximately $110,769.12 per year. On appeal, the petitioner submits a letter from Senior Staffing Specialist at the NYSE, who verifies that the beneficiary's "total compensation, including bonus and benefits for 2004, was $267,000," which "ranks her in the 98th percentile of the Exchanges salary distribution for non-officer employees." also explains that the beneficiary would "command a significantly higher compensation package if she held a similar position in the 'for profit' sector of the financial community." We cannot consider this evidence of the beneficiary's 2004 compensation because it was granted after the petition was filed. The petitioner must establish the beneficiary's eligibility at the time of filing. *Id.* Moreover, the petitioner submitted no evidence that the beneficiary's compensation at the time of filing was significantly higher than other researchers in her field employed at non-profit organizations or comparable to the salaries of such individuals at the very top of her field. Consequently, the beneficiary does not meet this criterion.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The evidence in this case indicates that the beneficiary is an accomplished financial researcher who has made valuable contributions to her field. However, the record does not establish that the beneficiary had achieved sustained national or international acclaim placing her at the very top of her field at the time of filing. She is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and her 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. This decision is rendered without prejudice to the filing of a new petition under Section 203(b) of the Act, 8 U.S.C. § 1153(b), with the requisite supporting documents.

ORDER: The appeal is dismissed.