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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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File: WAC-99-131-52027

Office: California Service Center

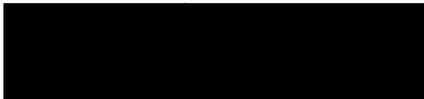
Date: DEC 06 2002

IN RE: Petitioner:  
Beneficiary:



Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(2)

IN BEHALF OF PETITIONER:



**PUBLIC COPY**

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, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

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

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

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

(B) Waiver of Job Offer. -- The Attorney General may, when he deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. degree in Engineering Economic Systems from the Leland Stanford Junior University (known better as Stanford University). The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor Service regulations define the term 'national interest.' Additionally, Congress did not provide a specific definition of 'in the national interest.' The Committee on the Judiciary merely noted in its report to the Senate that the committee had 'focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .' S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to Service regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the 'prospective national benefit' [required of aliens seeking to qualify as 'exceptional.']. The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 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.

The nature of the petitioner's work and the proposed benefits to the United States appear to have changed since the petition was initially filed. In support of the petition, the petitioner claimed that his work with economic modeling for institutions of higher learning would permit U.S. universities to control their costs and limit spiraling tuition costs. In response to the director's request for additional documentation, however, the petitioner submitted a lengthy letter in which he asserted that his future project would be arranging Internet business curriculum from U.S. business schools for use in Taiwan. The director concluded that the petitioner was seeking to work as an associate professor of economics, a position with intrinsic merit, and that the proposed benefits of his work, "economic development, infrastructure durability [and] public safety," would be national in scope.

The director's characterizations of the petitioner's work and its proposed benefits are extremely broad. The petitioner now claims that his eligibility is based on his plan to arrange for U.S. business schools to provide curriculum on the Internet for use in Taiwan. We agree that this proposal has intrinsic merit. Regarding the proposed benefits of this work, the petitioner claims:

The effort will benefit the US economy by helping to build a steady, inexpensive, yet highly knowledgeable labor force for Taiwan's companies, many of which are the original equipment manufacturer (OEM) and original design manufacturer (ODM) partners of major US corporations.

Gregory Henschel, the project officer for the Department of Education who oversees the grant funding the petitioner's work, asserts that he "anticipates that [the petitioner's] work on cross-border distance education will benefit universities across the U.S. and may further boost the productivity and competitiveness of U.S. business." As implied by the director, while the proposed benefits are highly speculative, they would be national in scope.

It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications will.

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 he seeks. 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 219, note 6.

Dr. James V. Jucker, who served on the petitioner's examination committee at Stanford, provides general praise of the petitioner. Dr. Jucker states:

The model that [the petitioner] developed is very sophisticated; it addresses relevant problems in planning for higher education. It makes significant advance in our ability to understand and make resources allocation decisions in higher education.

Dr. Jucker also asserts that the petitioner has been involved in a significant amount of research and writing projects since obtaining his Ph.D.

Dr. David Luenberger, a member of the petitioner's dissertation committee at Stanford, asserts that he has worked with the petitioner on several projects and sponsored his appointment as a visiting associate professor to teach "International Investments," an important topic for which no other candidate was "available."

The petitioner submitted a letter from Dr. William Massy, who oversaw the petitioner's research for the Sloan Foundation. While we acknowledge Dr. Massy's impressive credentials, his comments must still be viewed in the context of the petitioner's collaborator. Dr. Massy writes:

[The petitioner] is one of the handful of researchers world-wide doing quantitative modeling of higher education systems. His ability to blend deep engineering-economic systems know-how with finance and higher education is unique as far as I know. He is applying these tools to important problems related to cost containment in higher education. For example, his model of university resource allocation breaks new ground in quantifying how schools balance academic values

with market forces, which is one of the most vexing problems facing college and university leaders today. I have used his model in a large-scale simulation of university operations, which is a centerpiece of the Sloan Foundation's current research program on the understanding of higher education as a system, and I expect to collaborate with him on future work of this kind.

In my judgment, [the petitioner's] work represents a significant contribution to a field that many, including the National Commission on the Cost of Higher Education in its report to the Congress last January, consider to be of great national policy import. Most research on higher education is qualitative in nature, and little of it deals with economic-systems issues. Improving the cost-effectiveness in the country's colleges and universities is important both for human development and international competitiveness. [The petitioner's] work is well positioned to further this objective.

Mr. Massy does not, however, confirm counsel's assertion that the petitioner's model was simulated at Stanford and shown to increase efficiency up to 25 percent or that the petitioner's model is the centerpiece of the Sloan Foundation's current research program. The assertions of counsel do not constitute evidence. Matter of Obaighena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). Regardless, in response to the director's request for additional documentation, the petitioner indicates that he is no longer working on economic models for colleges and universities. As stated above, he is now working on adapting U.S. business school curriculum for Internet use by business students in Taiwan.

Charles Chon, president of Tung Hua Book Company, asserts that the petitioner translated and adapted *Principles of Economics* "for the Chinese audience" and that the translation sold 30,000 copies, a new record for textbooks in Taiwan.

Susanna Smart, developmental editor for South-Western College Publishing, asserts that she offered the petitioner a contract to prepare lecture slides to accompany the text, *Practical Investment Management*, after he inquired whether such slides were available. Ms. Smart continues:

[The petitioner] has completed the task and provided us with an outstanding set of PowerPoint lecture slides. In this lecture package, he has explained complex financial concepts in a clear and lucid manner that will enhance the teaching and learning processes, and elicit student interest -- a sometimes challenging task that has been effectively achieved with this product. I will be pleased to turn to him for future publishing projects.

The petitioner also submitted a letter addressed to him from Jodi Hirsh, editorial assistant for Prentice Hall, expressing appreciation for the petitioner's agreement to evaluate five chapters of *Finance 1/E*. Ms. Hirsh notes that the book is in its developmental stage and that the petitioner's comments and insights will be carefully considered by the authors.

In response to the director's request for additional documentation, the petitioner submitted a letter from Gregory Henschel, project officer at the Department of Education, for the research grant to Stanford University. Mr. Henschel states:

I can attest to the great importance the Department of Education places on the research [the petitioner] is helping to perform. I deem [the petitioner's] contributions to the project at Stanford, under the direction of Dr. William Massy, to have significant value to the U.S. national interest.

[The petitioner] is regarded by his research team and, hence, by this office to be exceptional. Based on reports from the project director, I am convinced that [the petitioner's] ability to perform the work exceeds that of other well-qualified, talented, experienced or highly skilled economic researchers.

While Mr. Henschel has not directly worked with the petitioner, he appears to be relying on information from the director of the petitioner's research project. Moreover, Mr. Henschel's letter does not appear to represent the official position of the Department of Education.

On appeal, the petitioner asserts that he has progressed with his plan. He submits a letter from Professor Zemsky, director of the Institute for Research on Higher Education at the University of Pennsylvania, asserting that his university is currently developing a joint degree program with Cheng Chi National University in Taiwan through the petitioner. He asserts that only the petitioner has the teaching and administrative experience with U.S. and Taiwan universities to broker such deals.

A petitioner must establish eligibility at the time of filing. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971). At the time of filing, the petitioner was relying on the proposed benefits of his economic models for U.S. universities. While we acknowledge that the petitioner did have some experience with adapting U.S. economic texts (and, therefore, curriculum) for use in Taiwan at the time of filing, the petitioner has not established that he had begun working on joint degree programs between U.S. and Taiwanese universities at that time. Even on appeal, evidence that one university is developing a joint degree program with the petitioner's help is not evidence that the petitioner has a past history of influence on the field with regard to joint degree programs or the exchange of curriculum through the internet.

Finally, even if we accepted that the petitioner had adequately documented the significance and influence of his work with economic models for colleges and universities, the nature of the petitioner's current project is so unrelated to that previous work that we cannot conclude that the petitioner's prior alleged success is an indication that his current work will enjoy the same success. The record contains no letters from independent economists discussing the importance of the petitioner's current work. Without such evidence, we are unable to determine the significance of the petitioner's contributions.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, U.S.C. 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

**ORDER:** The appeal is dismissed.