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U.S. Department of Justice
Immigration and Naturalization Service

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



File: EAC 99 245 54120 Office: Vermont Service Center Date: DEC 09 2002

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

IN BEHALF OF PETITIONER:
[Redacted]

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INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Elizabeth Hayward
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary 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 is an international law firm that seeks to employ the beneficiary as an international finance attorney. 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 beneficiary qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

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

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

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

(B) Waiver of job offer.

(i) Subject to clause (ii), the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

(ii) Physicians working in shortage areas or veterans facilities.

The petition was filed on August 17, 1999. The beneficiary was awarded a Master of Laws degree from New York University in 1997. The beneficiary's occupation falls within the pertinent regulatory definition of a profession. The beneficiary 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.

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 beneficiary's contributions in the field are of such unusual significance that he merits the special benefit of a national interest waiver, over and above the visa classification sought. By seeking an extra benefit, the petitioner assumes an extra burden of proof. The petitioner must demonstrate the beneficiary's past history of achievement having some degree of influence on the field as a whole. *Id.* at note 6.

Counsel describes the beneficiary's work:

[The beneficiary] is an International Finance Attorney with [REDACTED] a very large and prestigious international law firm based in New York with offices in Beijing and Hong Kong in addition to other cities around the world... The job of international attorney is to facilitate investment and business dealings for U.S. companies

abroad and for foreign companies in the United States. [The beneficiary's] clients are large companies, including international banks and leading multinationals.

The beneficiary describes how he will serve the national interest:

My work in the field of international finance enables U.S. companies to operate in China and allows Chinese parties raising capital, acquiring businesses or assets, or trading in international markets, and U.S. companies making direct investments or establishing joint venture or wholly owned business operations in China [sic]. These operations result in increased revenues for U.S. firms and provide substantial financial benefit to the United States.

The petitioner provides two brochures about [REDACTED] that appear to have been printed prior to the beneficiary joining their firm in September 1997. We note here that the beneficiary was licensed to practice in the State of New York on April 8, 1998 and has been a member of the American Bar Association since 1998. The brochures from [REDACTED] contain the following statements:

About 20 of our attorneys and other professionals speak Chinese fluently. In China, we have represented or are currently representing:

Merril Lynch and Co. and J.P. Morgan Securities Inc. as joint lead underwriters in the establishment of a U.S.\$1.5 billion debt registration for the PRC, the first U.S. shelf registration by China. The firm then represented the joint lead underwriters in China's U.S.\$400 million shelf takedown, which included a U.S.\$100 million tranche of "Century" bonds maturing in the year 2096.

Shanghai holdings... offering raised more than U.S.\$140 million.

Huaneng Power International, Inc. in a U.S.\$636 million global initial public offering that was U.S.-registered and listed on the New York Stock Exchange; and

The U.S., Hong Kong, and international underwriters in a U.S.\$343 million initial public offering of common stock and American Depositary Shares of Shanghai Petrochemical Company...

In other international financings [REDACTED] has advised with respect to more than U.S.\$2 billion of financings relating to projects in China...

According to Securities Data Company, [REDACTED] ranked first among law firms in connection with completed domestic merger and acquisition deals for 1996. We were involved in 96 deals valued at \$183 billion.

Skadden, Arps ranked first among law firms in connection with representing issuers of international equity, according to a survey which appeared in the September 1996 issue of *International Finance Review*.

According to the January 31, 1997 issue of *The American Banker* Skadden, Arps was the number one legal advisor for mergers and acquisitions in the financial institution sector in 1996, with a total deal value of \$25.9 billion.

Clearly, the petitioner is a distinguished international law firm that has been highly successful in Chinese business transactions prior to beneficiary's employment at the firm.

The petitioner submits several witness letters in support of the petition. James Link, Vice President of Global Sales for Raytheon Aircraft Company, states:

We have been working diligently to place our aircraft products into the Chinese market and have recently been successful in delivering the first of two aircraft to Hainan Airlines. [The beneficiary] is the attorney representing our customer [Hainan Airlines] and has done an outstanding job in assisting this transaction valued at U.S.\$18 Million.

As the world's largest supplier of general aviation aircraft, we have business dealings in almost all international locations, and our recent dealings in China have been successful due to [the beneficiary's] direct involvement. [The beneficiary] will play a crucial role with his international legal expertise in our ongoing dealings with the Chinese market. [The beneficiary's] approval as a permanent resident will allow him to continue his extremely important long-term involvement in assisting the exports of our general aviation aircraft into China. This will benefit the United States by increasing Raytheon Aircraft's exports of our commercial aviation products into a new market with unlimited potential.

While the beneficiary has assisted Hainan Airlines with purchasing two Raytheon aircraft in a transaction involving \$18 million, it could be easily argued that the sale would have proceeded regardless of the petitioner's individual participation, particularly in light of his firm's record of expertise with Chinese companies. Therefore, we reject the notion that without the beneficiary's individual involvement, the purchase would not have occurred. To credit the beneficiary with the sale would be to neglect the quality of Raytheon's aircraft and the efforts of Raytheon's own sales force. We accept that the beneficiary played a role in facilitating the sale to Hainan Airlines; however, it should be noted that the beneficiary was representing the interests of the Chinese company that hired his firm, not Raytheon or the U.S. aircraft manufacturing industry. Furthermore, the nature of the beneficiary's job is to ensure that such sales are concluded; simply being a competent international finance attorney cannot suffice to demonstrate eligibility for a national interest waiver.

The letters from Marc Baer, Corporate Counsel, International Lease Finance Corporation, and Jerome Cohen, Professor of Law at New York University (where the beneficiary received his degree), contain the following identical paragraphs:

[The beneficiary] is one of a small number of international finance attorneys in the United States who has all of the necessary prerequisites to enable him to address every dimension of U.S.-Chinese business transactions. Because of his excellent Chinese legal education, his extensive experience in a large international U.S. law firm and the Central Bank in China, his LLM degree from New York University, and his native Chinese and near native English language capabilities, he is uniquely able to work with both U.S. and Chinese companies and institutions engaged in complex financial transactions.

While there are many excellent lawyers in both the United States and China who can work on cross-border transactions, there are very few who combine so well the skills that are needed by both U.S. and Chinese counterparts. [The beneficiary's] ability to work equally well with both Chinese and U.S. clients means that transactions are more successful – he is able to identify the U.S. and Chinese law concerns that must be addressed, research them thoroughly and get the message across to the parties in ways that they can understand.

It is not clear who is the actual author of these common paragraphs, but it is highly improbable that Marc Baer and Professor Cohen independently formulated the exact same wording. It is acknowledged that these individuals have lent their support to this petition, but it remains that at least one of these individuals did not independently choose the wording of his letter. The identical passages in their letters refer to several objective qualifications that are necessary to perform the beneficiary's position. We note here that any objective qualifications can be articulated in an application for alien labor certification. Pursuant to Matter of New York State Dept. of Transportation, an alien cannot demonstrate eligibility for the national interest waiver simply by establishing a certain level of training or education that could be articulated on an application for a labor certification. Instead, the petitioner must demonstrate the beneficiary's past history of significant accomplishment that distinguishes the beneficiary from other competent international finance attorneys.

In referring to a transaction in which the beneficiary represented China Hainan Airlines, Marc Baer states that he was “very impressed with [the beneficiary's] diligence and representation of his client.” The beneficiary may have benefited various clients through projects undertaken by his firm, but such success does not persuasively distinguish the beneficiary from others in his field or specialty. The performance of legal financial services for a given client is of interest mainly to that particular client. While foreign trade certainly benefits the United States, it is important to note that the beneficiary's specific individual efforts primarily serve the interests of his law firm and their Chinese clients.

Richard Smith, Vice-Chairman, UTF Aviation International Group, states:

I have held a position as Vice-Chairman for UTF Aviation International Group, Inc., and it is in this capacity that I became acquainted with [the beneficiary], as he represented Hainan Airlines, Haikou, China, in a transaction involving UTF, wherein Hainan early terminated their lease of one used Learjet model 55 Aircraft with UTF, and purchased the Aircraft back

from the Lessor. The transaction dollar volume exceeded U.S.\$4 million.

[The beneficiary] played a critical role in the above referenced transaction. He exhibited exceptional skill, demonstrating a high level of understanding of United States business practices, and a very high degree of ethical behavior.

The beneficiary's effective representation of China Hainan Airlines certainly benefits that company and his law firm, but the beneficiary's individual impact on the national interest of the U.S. appears negligible. We do not dispute that foreign purchases of U.S. aircraft are beneficial to the national economy, but the petitioner in this case has not shown that the beneficiary originated these sales, has significantly impacted the U.S. aircraft manufacturing industry, or conducts his negotiations in an effort to maximize profits for the U.S. manufacturers rather than minimizing the expenses of his Chinese clients.

Geoffrey Miller, Professor of Law at New York University, describes the beneficiary as "one of a very few attorneys who combines a knowledge of international finance and economics, with outstanding skills in Chinese and English, and exceptional talents of legal analysis." Professor Miller further notes that the beneficiary "possesses the necessary training and talents to handle complex securities and corporate transactions between Chinese and U.S. enterprises." In accordance with the statute, exceptional ability is not by itself sufficient cause for a national interest waiver. The benefit that the beneficiary presents to his field of endeavor must greatly exceed the "achievements and significant contributions" contemplated in the regulation at 8 C.F.R. 204.5(k)(3)(ii)(F). The petitioner must establish that the beneficiary will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. It cannot suffice to state that the beneficiary possesses useful skills, or a "unique background."

Professor Miller notes that the beneficiary was selected to attend NYU as a participant in the Hauser Global Scholars Program. Information provided by the petitioner states: "NYU's Global Law School brings together top students from around the world... The Hauser Global Scholars Program... offers generous financial support to a limited number of foreign students for a year of study at the law school leading to the Master of Laws degree." While the beneficiary's receipt of a Hauser Scholarship may place him among the top law students that applied for participation in the program, it offers no meaningful comparison between the beneficiary and practicing attorneys in the international finance arena.

Gunilla Haac, Assistant General Counsel, Bank of America Corporation, states:

Among the recent transactions which the Bank of America has been involved with for which [the beneficiary] has played a critical role are two commercial paper programs, each valued at U.S. \$100 million. These two commercial paper programs involved large Chinese companies, specifically China National Metals and Minerals Import & Export Corporation and China National Textiles Import and Export Corporation, and have provided U.S. banks and other investors with highly profitable and risk-free investments which are to the

considerable benefit of the U.S. economy. Each such commercial paper program, involving highly liquid short term money market instruments issued by a U. S. company and guaranteed by a large Chinese corporation approved by the Chinese Government, generates millions of dollars in profit to the U.S. financial service industry. More importantly, many new jobs in the U.S. financial service industry have been created as a result of these transactions because the nature of these transactions requires the participation of a wide range of different types of U. S. financial institutions including banks, securities firms, credit rating agencies and firms providing custodian and clearing services.

This type of financial transactions involves highly complex multi-jurisdictional issues and requires international finance counsel who has a highly sophisticated background and advanced understanding of both Chinese and U.S. financial law and practice. There are very few international finance attorneys such as [the beneficiary] who have the ability to function at an extremely high level with respect to both Chinese and U.S. financial and legal systems. Without the expertise of [the beneficiary] to guide these transactions and solve thorny problems which brought the parties to impasse, these deals would not have been accomplished. In these transactions each of the U. S. party and Chinese party often insists on demanding certain terms or approaching the transactions in their own way due to their different social, financial and legal background, and such demands, if not understood and accepted by the other party, would cause the transactions to fall apart. [The beneficiary] helped the parties understand why certain demands are reasonable or unreasonable and thus find a common ground upon which the parties could proceed further with the transactions. For example, he helped the parties solve issues involving computer year 2000 problems, foreign debt registration with the relevant Chinese government agencies, different treatment of certain financial assets under the U.S. and the Chinese accounting and legal standards, etc. He also drafted or reviewed legal documentation either in English or in Chinese as were required by the U.S. law or the Chinese law, as the case may be. With respect to currently ongoing deals, his participation is absolutely required for the same reasons.

These transactions involve billions of dollars. They result in considerable benefit to the U.S. economy because they provide many job opportunities in the U.S. financial service industry, generate millions of dollars in profit to the U.S. financial institutions and help maintain and promote the financial prosperity of the American society at large by providing investors with investment instruments that guarantee safe and profitable returns. The ability of financial institutions such as Bank of America to be able to continue handling commercial paper transactions for large Chinese multinationals is critically important to our ongoing financial success. We can only do this work if we have available to use top experts like [the beneficiary] who can transcend both financial and legal systems and enable these transactions to be successfully consummated. Without his skills, this international work is in jeopardy with considerable loss to the U.S. economy as a result.

Gunilla Haac's letter describes skills that are typically required of competent attorneys in the international finance arena. Skillful and successful negotiation of complex financial matters is an inherent duty of the beneficiary's occupation. The implication of Gunilla Haac's letter, which we

cannot accept, is that the beneficiary qualifies for a national interest waiver simply by virtue of being a competent bilingual negotiator.

Gunilla Haac's letter also addresses the importance of retaining "top experts like [the beneficiary]" to complete financial transactions involving Chinese multinational corporations. Pursuant to Matter of New York State Dept. of Transportation, the overall importance of a given project is insufficient to demonstrate eligibility for the national interest waiver. While the Service acknowledges the substantial financial benefits associated with the implementation of commercial paper programs involving large Chinese companies, eligibility for the national interest waiver must rest with the alien's own qualifications rather than with the position sought.

Peter Halasz, Special Counsel to Schulte Roth & Zabel, a law firm in New York City, practicing in the areas of mergers and acquisitions, securities law, corporate finance and international business transactions, states:

I have worked closely with [the beneficiary] over the past couple of years. He and I worked on several international financial transactions including the public offering in New York and Hong Kong of \$140 million of common shares of Huaneng Power International, a Chinese corporation, and several commercial paper programs in the United States on behalf of various Chinese issuers. These commercial paper programs are typically renewed on an annual or biannual basis and frequently involve the ongoing issuance of securities for hundreds of millions of dollars. We also worked together on the restructuring of an offshore series of funds to which U.S. investors have committed several hundred million dollars to joint ventures with Chinese businesses. In these matters [the beneficiary's] participation contributed to the U.S. economy, by facilitating the ability of Chinese businesses to access the U.S. capital markets and the ability of U.S. businesses to invest in China, thus providing benefits to U.S. banking and investment institutions and professionals. [The beneficiary], as one of the few attorneys with a facility in both U.S. and Chinese law relating to capital markets, is very useful in bringing such transactions to the U.S. As you may know, the U.S. capital markets compete with other such markets around the world. Many Asian companies have perceived the U.S. capital markets to be difficult, partly because of their perception that U.S. regulation is burdensome and partly because of their lack of familiarity with U.S. markets. As a result, U.S. banks, investment banks, and other institutions and professionals find it difficult to secure that Asian business. It is important for experienced individuals having expertise in both U.S. law and Chinese law to be present in New York so as to attract Chinese participants to our capital markets.

[The beneficiary] is such a person. [The beneficiary], due to his experience working for the Chinese banking authorities and his knowledge of Chinese law and business practice, commands respect of Chinese businesses, who, as a result, feel more comfortable doing financing transactions in the U.S. This familiarity and expertise is also of considerable use to U.S. businesses who seek to engage in business in China. [The beneficiary's] familiarity with U.S. law is similarly helpful to these international transactions.

Peter Halasz states that he worked closely with [the beneficiary] over the past couple of years. However, the information provided on the beneficiary's Form ETA-750B shows no record of the beneficiary's employment with Schulte Roth & Zabel. The record is not clear as to the capacity in which the beneficiary worked with Peter Halasz, or the existence of a relationship between Mr. Halasz and [REDACTED]. We further note Mr. Halasz's claim that he and [the beneficiary] "worked on several international financial transactions including the public offering in New York and Hong Kong of \$140 million of common shares of Huaneng Power International." We refer to the brochure from [REDACTED] that credits their firm with representing "Huaneng Power International, Inc. in a U.S.\$636 million global initial public offering that was U.S.-registered and listed on the New York Stock Exchange." While it is possible that the public offering of \$140 million in common shares described by Mr. Halasz occurred subsequent to the initial public offering of \$636 million described in the brochure from [REDACTED] the petitioner has not clarified this issue or offered specific details of the beneficiary's primary role in completing the \$140 million project.

Dr. Albert Teplin, Chief, Flow of Funds Section, Division of Research and Statistics, Federal Reserve System, states:

I have followed [the beneficiary's] career closely since meeting him in China in 1995. While there he guided me through a number of meetings with officials at key institutions located in Shanghai, such as the commodity exchange and stock market exchange. At that time, he impressed me with his extensive knowledge of China's economy, both the legal and practical framework in which activity was taking place. Once in the United States, [the beneficiary] kept me informed about his studies at New York University and subsequent work at a large international law firm and admittance to the bar of the State of New York. Throughout this time he has displayed a thorough understanding of finances of the Chinese economy, an excellent facility in English, and a remarkable ability for translating and explaining complex economic and legal concepts.

Clearly, [the beneficiary] is an extraordinary individual with unique abilities that are being employed in ways that are promoting the interests of the United States. His thorough knowledge of Chinese financial dealings and his legal training in both the U.S. and China have been usefully combined to assist in setting up maintaining commercial paper programs in the United States for large Chinese firms. He has worked also on recapitalization and stock offerings of Chinese firms in the United States. Such efforts further United States leadership in international financial markets and provide a basis for growth of U.S. banks and investment companies.

[The beneficiary's] legal work to secure purchases and leases of aircraft from Hainan Airlines benefits the U.S. directly through its contribution toward maintaining high levels of production and employment in the critical and strategic domestic airline industry. In addition to the immediate benefits from such work, the relationships between Chinese customers and major U.S. manufacturers and leasing companies establishes long-term relationships with a potentially large customer base for U.S. companies.

My experience recruiting and hiring highly trained professionals has taught me that it would be nearly impossible to find someone with the combination of skills [the beneficiary] has already demonstrated. Moreover, special training of individuals to meet these combined skills likely would be prohibitively expensive and time consuming for U.S. firms.

Dr. Teplin emphasizes the beneficiary's high level of training and unique combination of skills as a lawyer. We note here that any objective qualifications that are necessary for the performance of the beneficiary's position could be articulated in an application for alien labor certification.

Several of the above witnesses, such as Dr. Teplin, have stressed the importance of the projects in which the beneficiary has played a contributory role. 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. By law, advanced degree professionals and aliens of exceptional ability are generally required to have a job offer and a labor certification. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. Mountain States Tel. & Tel. v. Pueblo of Santa Ana, 472 U.S. 237, 249 (1985); Sutton v. United States, 819 F.2d 1289, 1295 (5th Cir. 1987). By asserting that the beneficiary's involvement in financial transactions between China and the U.S. inherently serves the national interest, witnesses for the petitioner essentially contend that the job offer requirement should never be enforced for bilingual international finance attorneys, and thus this section of the statute would have no meaningful effect. Congress plainly intends the national interest waiver to be the exception rather than the rule.

The director requested further evidence that the beneficiary had met the guidelines published in Matter of New York State Department of Transportation. In response, the petitioner submitted arguments from counsel and additional witness letters.

Edmund Duffy, Senior Partner at Skadden, Arps, Slate, Meagher & Flom, states:

[The beneficiary] is an International Finance Attorney who is an extremely important participant in a number of international finance transactions which have critical implications for the U.S. economy. These include initial public offerings for Chinese companies in the U. S. capital market, merger and acquisitions involving Chinese companies whose shares are listed on New York Stock Exchange and are held by investors throughout the United States, money market transactions involving the issuance of commercial paper in the U.S. capital market and sale of a large number of Boeing and Raytheon aircraft to the Chinese market. These transactions are valued in excess of approximately \$3 billion. The U. S. holders of the shares and debts issued by the Chinese companies involved in these transactions are located throughout the United States. Therefore, the benefit to the U.S. economy from such transactions should be clear. It should also be clear that such transactions are not a regional benefit, but that, at this level, the impact on the economy is national in scope.

Edmund Duffy argues persuasively that the beneficiary's field possesses substantial intrinsic merit, and that the proposed benefits of beneficiary's projects could be considered national in scope due to the dollar amounts of the aircraft sales and commercial paper transactions. While the projects to which the beneficiary contributes may have some degree of impact on the national economy, the petitioner must still demonstrate that the beneficiary, as an individual, has demonstrated significant influence within his profession and that his past record demonstrates an ability to serve the national interest to a greater extent than other international finance attorneys.

Edmund Duffy's letter lists several large financial transactions involving the beneficiary as legal representative for various Chinese companies. Several of these events 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. New circumstances that did not exist as of the filing date cannot retroactively establish eligibility as of that date.

In his second letter, Dr. Teplin states that the beneficiary's knowledge and skills will enhance opportunities in the U.S. commercial paper market. Dr. Teplin adds: "[The beneficiary's] legal expertise and his unusual multi-language capability and understanding of Asian culture gives the U.S. a decided advantage in future negotiations for sales and leases of planes by foreign airlines." These statements are entirely speculative and suggestive of future results rather than a proven track record of significant achievements in the international finance arena. We note that the record contains evidence showing that the beneficiary has represented only Chinese companies (including Hainan Airlines). While Dr. Teplin asserts that the beneficiary's skills may at some future point "give the U.S. a decided advantage" in aircraft purchase and lease negotiations, the record contains no evidence showing that the beneficiary has already directly represented a U.S. aircraft manufacturer.

Dr. Teplin concludes his letter by stating "[I]t is unlikely in today's labor market that someone with the beneficiary's skills could be found." Pursuant to Matter of New York State Dept. of Transportation, a shortage of qualified workers in a given field, regardless of the nature of the occupation, does not constitute grounds for a national interest waiver. Given that the labor certification process was designed to address the issue of worker shortages, a shortage of qualified workers is an argument for obtaining rather than waiving a labor certification.

Additional letters from Adam Tan, Executive Director of China's Hainan Airlines Company, and Youxin Ma, General Manager of New Century International Leasing Corporation, one of China's largest finance leasing companies, describe the beneficiary's critical support and involvement in their companies' financial transactions.

Jason Liao, Regional Sales Director, Greater China, Raytheon Aircraft Company, states that while the beneficiary served as legal counsel to Hainan Airlines Company, Raytheon was able to sell China more than \$100million worth of aircraft. Jason Liao further states:

[The beneficiary] participated in all our transactions with Hainan Airlines Company... and with his excellent knowledge of the Chinese and U.S. laws and cultures and his outstanding ability to work smoothly with both Chinese and American clients, has played a crucial and indispensable role in helping all such transactions, which has benefited the U.S. economy by millions of dollars.

We are not persuaded by the observation, offered by several witnesses, that the beneficiary has a special perspective on financial issues because he is Chinese and knows the Chinese financial system. The beneficiary shares this trait with many Chinese professionals, and appeals to the beneficiary's national origin rests on the notion that the beneficiary's alienage is a qualifying factor for immigration benefits. Simply possessing knowledge of Chinese laws and culture does not single out the beneficiary for the special benefit of a national interest waiver.

China is certainly a significant market important to the U.S. economy, but it is not the only country requiring legal expertise in international financial matters. Simply put, the petitioner has not distinguished the beneficiary from other international finance attorneys who conduct similar business transactions with foreign-based companies from throughout the world. [REDACTED] [REDACTED] own brochure (December 1996) contains information showing that their firm represented companies located or doing business in over forty countries. The petitioner has not shown that the beneficiary's work is more significant than that of other lawyers who specialize in international finance.

The director denied the petition, stating that the petitioner failed to establish that a waiver of the requirement of an approved labor certification would be in the national interest of the United States. The director also stated: "The beneficiary's involvement in the foreign aspect of international finance, standing alone, does not qualify him for a national interest waiver. Simple exposure to advanced occupational training in international law can be articulated on an application for a labor certification."

On appeal, counsel states that the director's decision "disregarded substantial and probative evidence" that supported the petition. Counsel protests the director's finding that "[t]he record does not clearly establish that this beneficiary and only this beneficiary represents a significant benefit to the field of endeavor." We concur with counsel that this standard is unduly restrictive and inconsistent with established policy. This error, however, represents only a small part, rather than the central premise, of the director's denial. We also concur with counsel as to the national scope of the financial transactions involving the beneficiary. While the wording of the director's decision could certainly be improved, it is not so flawed as to undermine the grounds for denial.

We disagree with counsel's assertion that the labor certification process does not allow for advanced occupational training such as the beneficiary's to be articulated in a labor certification. Counsel argues that the qualifications sought by the petitioner "would be considered to be 'unduly restrictive'" pursuant to 20 C.F.R. 656.21(b)(2). While the petitioner may not be able to require a Hauser Fellowship, for example, the petitioner could certainly specify a Master of Laws degree. In this case, the petitioner's witnesses have identified several objective qualifications

that would be amenable to labor certification.

The inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner must still demonstrate that the beneficiary will serve the national interest to a substantially greater degree than do others in the same field. Congress plainly intended that, as a matter of course, advanced degree professionals should be subject to the job offer/labor certification requirement. The national interest waiver is not merely an option to be exercised at the discretion of the alien or his employer. Rather, it is a special, added benefit that necessarily carries with it the additional burden of demonstrating that the alien's admission will serve the national interest of the United States.

Counsel cites the witness letters as evidence that "the beneficiary is one of the very best at what he does." The statements from these witnesses, however, do not reflect that the beneficiary has attracted recognition beyond those who have worked with him directly, or that the beneficiary's accomplishments are of demonstrably greater value than the achievements of other attorneys employed in comparable positions at various international law firms. Skadden, Arps, Slate, Meagher & Flom's own brochure (December 1996) shows that their firm alone had "30 attorneys in Asia" and "about 20 attorneys and other professionals" that completed large transactions involving Chinese clients. Several of the financial transactions listed in the brochure far exceeded those completed by the beneficiary in terms of dollar volume.

Witnesses assert that the beneficiary has assisted in the completion of business transactions involving large sums of money, and they discuss the overall economic benefits associated with these transactions, but they do not indicate what level of national benefit can be ascribed specifically to the beneficiary as opposed to the other parties involved or general global economic trends (such as a reduction in U.S.-China trade barriers). For example, it could be argued that Raytheon's global sales force generated the aircraft sales and that the beneficiary merely facilitated the completion of the transactions for his Chinese client. While the beneficiary's projects have arguably been of some economic benefit to the U.S., facilitating such transactions is a routine duty for an attorney employed by an international law firm that specializes in conducting international business transactions.

While the U.S. does have an economic interest in expanding business opportunities with China and opening our markets to the Chinese, the petitioner has not shown that this market was impenetrable to U.S. businesses prior to the beneficiary's involvement. The beneficiary has certainly been an asset to the Chinese companies he represents, but a positive effect on a foreign corporation does not necessarily imply a proportionate effect on the U.S. economy overall.

Counsel describes Dr. Teplin, an undoubted expert in economics, as "an independent evaluator" of the beneficiary's qualifications. We note, however, that the beneficiary has been acquainted with Dr. Teplin since meeting him in China in 1995. Dr. Teplin became aware of the beneficiary because of their joint attendance at meetings in Shanghai, not based on the beneficiary's financial impact on U.S. markets. In this case, the petitioner's witnesses consist entirely of individuals with direct ties to the beneficiary. These individuals describe the beneficiary's expertise and value to his

current and former projects, but their statements do not demonstrate that the beneficiary's work has attracted significant attention throughout the legal profession or field of international finance.

Clearly, the beneficiary's colleagues have a high opinion of the beneficiary and his work, as do other individuals who know the beneficiary from financial dealings and his studies at New York University. While the beneficiary's past record need not be limited to prior work experience, he must clearly establish, in some capacity, the ability to serve the national interest to a substantially greater extent than the majority of attorneys practicing international finance. The Service here does not seek a qualified threshold of experience or education, but rather a past history of demonstrable achievement elevating the beneficiary's contribution above those of other attorneys handling similar transactions for companies from around the world. The beneficiary's uncontested competence in Chinese-American financial negotiations and distinguished academic background cannot alone satisfy the national interest threshold or assure substantial prospective national benefit. The petitioner must demonstrate specific prior achievements that establish the beneficiary's ability to benefit the national interest to a substantially greater degree than others involved in his profession.

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

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

ORDER: The appeal is dismissed.