

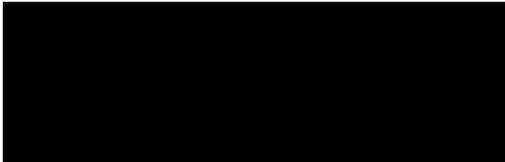


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U.S. Department of Justice
Immigration and Naturalization Service

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invasion of personal privacy.

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



File: EAC-00-135-50225 Office: Vermont Service Center Date: JUL 11 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: SELF-REPRESENTED

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, 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 an alien of exceptional ability. The petitioner seeks to employ the beneficiary as a senior financial analyst. 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.

On appeal, the petitioner asserts that it is a large bank and submits two additional letters attesting to the beneficiary's abilities.

For the reasons discussed by the director as well as the serious alteration of documentation discussed below, the appeal will be dismissed.

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.

It appears from the record that the petitioner seeks classification as an alien of exceptional ability. This issue is moot, however, because the record establishes that the petitioner holds an MBA from John and Wales University. The petitioner's occupation, senior financial analyst, 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, I.D. 3363 (Acting Assoc. Comm. for Programs, August 7, 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.

As required, the petitioner submitted Form ETA-750B, signed by the beneficiary under penalty of perjury. On this form, the beneficiary indicated that she began working for the petitioning bank in March 1999. This information is confirmed by Thompson Chung, Vice President/Portfolio Manager for the petitioning bank and Janice Arbel, Vice President/Branch Manager for the petitioning bank.

The petitioner submitted the article "Risk Management 2000: Effective Strategies for the Global Corporation" published in November/December 1996 in the *TMA Journal* ending on page 11 and the article "Corporate Hedging: What Have We Learned So Far," published in Spring 1999 in *Derivatives Quarterly*, pages 41 through 47. The name of the author of the 1996 article is not clearly discernible. The 1999 article reflects the beneficiary's name as the author, although the quality of the text of the beneficiary's name is noticeably better than the quality of the text of the

article. The photocopies of the first page of both articles contain the same biographic note seemingly about the author that states, “[The beneficiary] is the senior financial advisor and the senior risk analyst at [name of petitioning bank misspelled] in the United State [sic] of America.”

The same errors appear in both biographic notes for these two articles, published three years apart in two unrelated journals. Once again, the quality of the text of the biographic note on the 1999 article is noticeably better than that of the article text.

The record contains no evidence that the beneficiary began working for Fleet Bank in any capacity until 1999, three years after the first article was published. Second, the misspelling of the petitioning bank and “United States” is not consistent with publication in a major financial journal. These discrepancies strongly suggest that these articles have been altered.¹ It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988). Moreover, the submission of altered material, whether or not known to the petitioner, seriously reduces the credibility of the remaining documentation. Specifically, doubt cast on any aspect of the petitioner’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Id.

It is noted that the name of the petitioning bank is misspelled in the same way in a lengthy, unsigned letter purportedly from Vice President [REDACTED] setting forth the petitioner’s claim of the beneficiary’s eligibility. It is inconceivable that the vice president of a major bank would frequently and consistently misspell the name of that bank. Moreover, the unsigned letter is not on Dr. [REDACTED] personal letterhead as is his signed letter in which he correctly spells the name of the petitioning bank. As such, the author of the unsigned letter is unknown. As such, the assertions in the letter have little evidentiary value.

The petitioner also submitted several letters from the beneficiary’s colleagues at the petitioning bank. Dr. [REDACTED] in his signed letter, describes the beneficiary’s duties at the bank and asserts that her “work is critical to the stability and profitability of the bank.”

[REDACTED] Vice President and Portfolio manager for the International Banking Group, writes:

¹ A search on the Internet confirms that other individuals authored both articles. The Association for Financial Professionals, which took over the *TMA Journal* in 1999, includes on its website, www.afponline.org/gen/Abstract/.html, an index of abstracts for all articles published in that journal from 1994 to 1996. This index reflects that Robert Baldoni is the credited author for “Risk Management 2000: Effective Strategies for the Global Corporation.” Institutional Investor indicates on its website, www.ii-dq.com, that Clara Raposo is the credited author for “Corporate Hedging: What Have We Learned So Far.”

As a senior financial operator and risk analyst, [the beneficiary] worked on a series of information analysis and risk evaluation projects. Her information analysis and technique solutions were highly creative. She has a very strong suite [sic] of unique and specific financial information and analysis skills on Asia and China, especially international financial market & risk operation analysis.

Since [the beneficiary] quickly demonstrated international financial and investment market risk analysis capabilities as well as technical superiority and competence, she was promoted as the project leader when we conducted the research of [the] Taiwan and Hong Kong market[s]. She helped us accomplish the task of setting international market information and technical processing in the information and analysis and technology services that support the other consulting analysts interpreting and understanding where synergies exist. [The beneficiary] has been very successful and outstanding in international financial market operation and risk analysis. She focuses on our building our international financial and investment functionality and risk analysis guarantee by identifying and exploring the cross project synergies and reduc[ing] the risk and cost of our international market business. All of these have strongly proved that her outstanding contributions [are] not only to our satisfaction but also highly benefit lots of this country's clients and many companies that had already invested or will invest in Asia, [and are] even benefi[cial] to the international financial and investment business of our whole country.

In response to the director's request for additional documentation, the beneficiary submitted a letter from another representative of the petitioning bank, Janice Arbel, who discusses the prestige of the petitioning bank and provides general praise of the beneficiary.

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 the petitioner merits the special benefit of a national interest waiver, over and above the visa classification sought. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate the beneficiary's past history of achievement with some degree of influence on the field as a whole. Matter of New York State Dept. of Transportation, supra, at note 6. As stated by the director, the above letters are all from the beneficiary's colleagues at the petitioning bank. While such letters are important in providing details about the beneficiary's role in various projects, they cannot by themselves establish the beneficiary's influence over the field as a whole.²

² Whether or not any employees at the petitioning bank were aware of the alterations discussed above, their assessments of the beneficiary's accomplishments are unreliable. Obviously, if any of the petitioner's employees were aware of the alterations, and we do not suggest this is the case, the credibility of their letters is minimal. Even if no one at the petitioning bank had

The petitioner also submitted letters from Alexander Portnyagin and Esmond D. Smith, professors at Johnson and Wales University, which provide general praise of the beneficiary's abilities as a student at that institution. General praise of academic success is not evidence of the beneficiary's influence on the field of financial analysis as a whole.

Gao Si-Yuan, a professor of economics at Peking University discusses the beneficiary's abilities as a visiting professor there and states:

I have to point out that in 1992 with [an] invitation of our department [the beneficiary] joined the national economic research program about China's economic system and management reform, supervised by me. In this national big program concerned of operation science, [the beneficiary] put [a] lot of her energy and capacity in making a comprehensive probation [sic] of [the] best operational system and best plan of macro-economic operation and control for China's economic reform. So her profound point and analysis in this field had won [sic] to be highly appreciated by her peer[s], even lots of professional expertise [sic]. For that we[,] including [the beneficiary,] won the China National Progressive Science Award in October 1993.

The 1993 award is contained in the record. The petitioner also submitted evidence of the following awards issued to the beneficiary: the 1991 Year's Outstanding Woman Award from the China Woman's Enterprise and Managerial Talent Association; The 1992 Outstanding Elite Award of the Year from the Association of China Operation and Managerial Science; a Twentieth Century Achievement Award from the American Biographical Institute which appears to simply signify the beneficiary's selection for publication in a volume of *Five Hundred Leaders of Influence*; and a Distinguished Leadership Award also from the American Biographical Institute which appears to signify the beneficiary's selection for publication in the Ninth Edition of the *International Directory of Distinguished Leadership*. Selection for publication in a volume that contains the biographies of hundreds of others in one's field is not especially notable. The basis for selection is unknown. Regarding the remaining awards, assuming they are legitimate, they represent recognition by the beneficiary's peers. Such recognition, however, is but one factor in establishing eligibility for exceptional ability, a classification that, by statute, normally requires a labor certification.

██████████ General Manager for D&M Joint Venture, discusses the beneficiary's employment as the director of Public Relationship and Strategic Planning Human Resource Departments for that company. He writes:

knowledge of the alterations, however, it remains that the petitioner submitted those articles as evidence of the beneficiary's accomplishments. As such, it is clear that the petitioner has failed to corroborate the beneficiary's claimed accomplishments. Thus, the attestations by the petitioning bank's employees regarding the beneficiary's accomplishments remain unreliable.

[The beneficiary] facilitated setting up the D&M Joint Venture, a real estate multinational company in Beijing. Her strong interpersonal skills, wide contacts and rich international working experiences were fully demonstrated when she introduced D&M to the Chinese market.

Due to her integrity, competence, maturity and skill in dealing with people in various situations, she was transferred to the Director of Human Resource Department before long. [The beneficiary] drafted all D&M's working documents on human resource issues such as recruiting procedures, compensation policies, training and motivation options. It was even more impressive when she implemented them with adroitness. Her high caliber and working knowledge on foreign investment, Chinese labor law, welfare and compensation regulations helped D&M expand in the global competition.

Finally, Mr. [REDACTED] asserts that, due to her talent, the company sponsored the beneficiary to travel to the United States for her MBA. As with the letters from the employees at the petitioning bank, Mr. Chen's opinion that the beneficiary performed her job well is not evidence of her influence in the field.

In response to the director's request for additional documentation and on appeal, the petitioner did submit letters from more disinterested parties. Specifically, Michael Zhang, an associate for the Equity Derivatives Group at Morgan Stanley Dean Witter, writes (grammar as it appears in original):

The remarkable breakthrough from [the beneficiary] in her most recent working paper is to integrate three areas of risk management, e.g., Credit Risk, Market Risk, and Asset Liability management into a risk management system. [The beneficiary] effectively used her precious [e]xperience absorbed in China market and international background and links models including term structure modeling, yield-curve smoothing, market valuation, Value-at-Risk (VaR) analysis, net income simulation, transfer pricing, and credit analytic together, each of them is currently handed by different theories and departments, into an enterprises-wise risk management engine. Although this idea challenges most of general ideologies of risk control, it will definitely gain supports from financial academicians and scientists in the near future.

A beneficiary, however, must have already demonstrated a track record of success with some degree of influence on the field as a whole. Assurances that the beneficiary's current research, presently viewed as counter to generally accepted theories, will become influential at some point in the future are insufficient.

Davis Lee, Vice President of Credit Suisse First Boston Corporation, praises the beneficiary's market reports and other financial risk reports on the Asian markets. He asserts that her research will save research money for those banks wishing to expand into Asian markets. He further

praises her interdisciplinary skills which he defines as "unique." Regardless of the alien's particular experience or skills, even assuming they are unique, the benefit the alien's skills or background will provide to the United States must also considerably outweigh the inherent national interest in protecting U.S. workers through the labor certification process.

Joseph Barter, Associate Director for Economics at the Asia Society of which the beneficiary is a member, writes:

Through previous contact and experience with her, we found [the beneficiary] truly has a complete and systematically probation [sic] about Asian trade system, market condition and economic forecast for [the] Asian financial market[s]. Particularly as we are promoting the understanding between Asian businessmen, [we] try to provide more executive information and operative experience to American businessmen so as to protect their company and the American national interest. Indeed we feel that [the beneficiary's] research truly resolve[s] lots of our needs in this field.

This poorly articulated letter fails to clearly identify how the beneficiary's work has influenced her field. We simply note that this is the second letter in the record to use the word "probation" in a context inconsistent with any known dictionary definition. Finally, the beneficiary submitted a letter from Wilbur Monroe,³ President of the National Economists Club. This letter begins with a discussion of the club, but Mr. Monroe's discussion of the beneficiary's accomplishments is nearly word for word the same as Mr. [REDACTED]. Both letters are signed, allegedly by Mr. Monroe and Mr. [REDACTED]. Their signatures, if legitimate, reflect that they attest to the contents of the letters, although the nearly identical language suggests that the language is not their own.

The petitioner submitted evidence of the beneficiary's membership in the Global Association of Risk Professionals (GARP), the Financial Management Association International (FMA), the Association for Investment Management and Research (AIMR), the American Statistical Association (ASA), the National Association for Female Executives (NAFE), and the Association for Computing Machinery (ACM). The record does not contain the membership requirements for these organizations. Membership in professional associations is merely one factor for classification as an alien of exceptional ability, a classification normally requiring a labor certification. As such, we cannot conclude that simply submitting evidence relating to one of the criteria for that classification is evidence that the labor certification should be waived in the national interest.

The petitioner also submitted copies of what is purported to be the beneficiary's Market Report on China, a consultancy report on requirements for establishing an office in Beijing, and three Chinese language articles allegedly authored by the beneficiary and published in Chinese financial journals in 1997, while the beneficiary was a student in the United States. In light of

³ The author's first name is listed as "Wilbur" on the letter, which we presume to be "Wilbur."

the alterations of the articles discussed above, these alleged articles cannot be considered credible. See Matter of Ho, *supra*.

Wu Zhongyuan, Chairman of Press Commission of the Chinese Olympic Committee, discusses the beneficiary's role as international coordinator in the Press Commission of the Chinese Olympic Committee and the Chinese Sports Press Association from 1985 to 1992. In this role, the beneficiary facilitated the coverage of Chinese sports events, planned their budgets in China, arranged the itinerary, negotiated with various organizations, translated technical documents, interpreted at interviews and press conferences, and cooperated with foreign media. The petitioner submitted a letter from Jonathan Kolatch, a journalist for the *New York Times Magazine*, and a letter from Joop Niezen, Chief Editor of *Sport International*, expressing appreciation for the beneficiary's help in covering Chinese sports. The petitioner also submitted evidence of the beneficiary's award from the Chinese Ministry of National Sport and Training and newspaper coverage which includes photographs of her attending sports related events. The petitioner has not, however, established how the beneficiary's earlier work in this area relates to the beneficiary's current field of financial analysis.

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.

ORDER: The appeal is dismissed.