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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

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File: EAC-99-204-52700 Office: Vermont Service Center

Date: JUN 17 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: 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 classification 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 and/or 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.

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 a Master's degree in journalism from [REDACTED]. 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, 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.

It is clear that the petitioner works in an area of intrinsic merit, journalism. The petitioner has not established, however, that his proposed work in the United States, reporting in a foreign-owned newspaper aimed at the Chinese population in the United States, would produce benefits that are national in scope. The petitioner asserts that his reporting will lead to improved Chinese-U.S. relations which will benefit the United States as a whole. While the record contains letters from fellow journalists, the record contains no letters from the Department of State¹ or the Chinese government affirming that the petitioner has been involved in the diplomatic or economic relations between the two countries. The record establishes only that the petitioner reported on United Nations (U.N.) proceedings and diplomatic summits in which he played no active role. The petitioner argues that his reporting on U.S. culture, democracy and ideology is read by Chinese diplomats residing in the United States and impacts public opinion in China. The record does not establish that exposing Chinese diplomats and other Chinese citizens to such reporting will make a difference in the numerous and sensitive issues which effect Chinese-U.S. relations at the diplomatic level. The record does not reflect that Chinese diplomats residing in the United

¹ While the record does include a letter from the U.N. correspondent for the United States Information Agency (USIA), now under the Department of State, the record does not indicate that her opinion represents the official opinion of the USIA or the Department of State.

States principally derive their knowledge of U.S. civics, ideology or culture from the petitioner's articles. While journalism can play a role in public opinion, we cannot conclude from the available evidence that the petitioner as an individual has had or will have an impact that will substantially affect Chinese-U.S. relations.²

Finally, the petitioner has not established that he would present a national benefit so great as to outweigh the national interest inherent in the labor certification process. First, in order for a waiver of the labor certification requirement to be in the national interest, the petitioner must demonstrate that his presence within the United States is in the national interest. The petitioner's alleged contribution to U.S.-Chinese relations by exposing the Chinese in China to U.S. culture through his reporting, translating U.S. books, and eventually opening the Chinese media could be accomplished as well if not better in China. In fact, it is not clear how the petitioner can play any role in opening the Chinese media from within the United States. The petitioner's proposed benefit of helping Chinese-Americans with American law and culture is limited to those of Chinese origin. Assistance to one ethnic segment of the population cannot be considered national in scope.

Additionally, the petitioner must demonstrate that he would benefit the U.S. to a greater extent than an available U.S. worker with the same qualifications. 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 note 6.

[REDACTED] and [REDACTED] correspondent for [REDACTED] writes that the petitioner will assist in the opening of the Chinese media and continues:

[The petitioner's] experience in China combined with his knowledge of international affairs, and the ability to relate the two make him a unique asset for the United States in its consideration of policy towards the only power that currently has the potential to match us, economically, politically, and militarily."

[REDACTED] assistant managing editor for *People* magazine and the petitioner's former professor at Columbia University, simply chronicles the petitioner's career and asserts that he is the

² This conclusion is similar to the example in Matter of New York State Dept. of Transportation, that while pro bono work is in the national interest, the effect of one lawyer performing pro bono work is too attenuated at the national level to be considered national in scope.

best person for his job which involves “determining which stories to translate into Chinese for the paper’s many readers - from Chinese diplomats in Washington to bilingual business leaders in Manhattan.” She does not explain how the petitioner has influenced the field of journalism. Peter Thompson, an editor for *The Record*, [REDACTED] a former correspondent for the *Los Angeles Times*, provide similar information. [REDACTED] the director of the International Program at Columbia University, writes:

As a Columbia-educated journalist, familiar with the U.S. and its press practices, [the petitioner’s] presence in a senior position covering the United States may well be of benefit both to the U.S. and to the Hong Kong public in this crucial period of transition.

Similarly, [REDACTED] the U.N. correspondent for “The Washington File” of the United States Information Agency (USIA), states, “I want to emphasize the importance of having an experienced American-educated Chinese journalist working in the United States at this time.” [REDACTED] Ying, the Deputy Editor-in-Chief [REDACTED] (New York) where the petitioner works, asserts that the petitioner’s experience as a journalist in the United States and China is rare. We cannot conclude that an individual’s country of origin in combination with the source of his education is sufficient to establish eligibility for the waiver. A petitioner must establish that he has a track record reflecting some degree of influence on his field as a whole.

In response to the director’s request for additional documentation, the petitioner submitted new letters, including one from [REDACTED] Editor-in-Chief [REDACTED] (New York) [REDACTED] writes that the petitioner is uniquely qualified for his job because American journalists are not bilingual and Chinese translators do not have the journalistic experience that the petitioner has. Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor.

[REDACTED] also asserts that the petitioner provided comprehensive coverage of illegal smuggling of Chinese immigrants into the United States which contributed to the Chinese government’s crackdown on smugglers. Finally, [REDACTED] asserts that the petitioner initiated a column on bilateral trade between the U.S. and China which has fostered better economic relations and will reduce the trade deficit with China. [REDACTED] these claims in a new letter. The record, however, contains no letters from the Chinese government, American businessmen doing business in China, or high level officials at the United States Commerce Department to support these claims.

The petitioner also submitted a letter from [REDACTED] former president of the United National Correspondents Association, who asserts that in 1995 the petitioner’s exclusive interview with Chinese Disarmament Ambassador [REDACTED] “caught the attention” of the U.S. media and was cited in a research paper published by Harvard University and the Massachusetts Institute of Technology. [REDACTED] further asserts that the petitioner’s interview with Chinese Vice Premier and [REDACTED] after a meeting with then Secretary of State Warren

Christopher was picked up by the major news wires and signaled [REDACTED] willingness to meet with President Bill Clinton. [REDACTED] concludes that the petitioner's "access to and understanding of key Chinese officials, allied with his commitment to Western values make him a uniquely useful asset to this country."

[REDACTED] claims are not persuasive. All media disseminates information and it is inherent to the business to serve as a source of facts. As such, citation in a research paper is not especially notable. Regarding the petitioner's interview with [REDACTED] the minister had just met [REDACTED]. Thus, it is not clear that the petitioner was reporting any information that had not already been passed to the U.S. diplomatic corps at its highest level. Moreover, it is not clear that his access to high level officials is attributable to the petitioner personally as opposed to his previous position as U.N. correspondent for [REDACTED] a government controlled news service. As the petitioner is no longer a U.N. correspondent [REDACTED] and is seeking to increase his ties to the United States by becoming a permanent resident, it is not clear that his access to Chinese officials continues.

On appeal, the petitioner submitted an uncertified translation of a certification from [REDACTED] News Agency confirming that the petitioner was the only reporter given access to the proceedings of a meeting between U.S. and Chinese negotiators in New York and that he was in charge of the coverage of the summit between [REDACTED] President Clinton. As it is unlikely that the U.S. negotiators would agree to providing access to Chinese government-controlled media and not the U.S. media, it appears that the petitioner was the only reporter from [REDACTED] given access to the negotiations. As stated above, however, the petitioner does not seek to work [REDACTED]. As such, it is not clear that he continues to have access to Chinese officials.

The petitioner also submitted speeches by President Clinton regarding the importance of trade with China and China's admission into the World Trade Organization (WTO). The speeches thank the President's trade negotiators but do not indicate that the petitioner or even the press in general have been influential in this area.

The petitioner won the [REDACTED] 1996. The materials relating to this award reveal that it is a scholarship for students from the Asian/Pacific region. The petitioner has not demonstrated that this award reflects on his ability to improve Chinese-U.S. relations through journalism as claimed. The petitioner also won a Chinese journalism award and several merit certificates from the [REDACTED] News Agency where he worked at the time. These awards may demonstrate recognition by the petitioner's peers, one of the criteria for exceptional ability. As stated in Matter of New York State Dept. of Transportation, however, the exceptional ability classification normally requires a labor certification. We cannot conclude that evidence relating to one of the criteria for this classification merits a waiver of the labor certification process.

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.