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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 99 042 52345 Office: Vermont Service Center Date: 11 MAR 2002

IN RE: Petitioner:
Beneficiary:



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

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

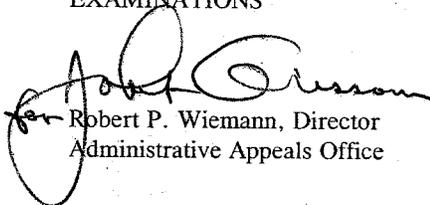
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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

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

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

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


for 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 a member of the professions holding an advanced degree. The petitioner has not provided a specific title for her job, but her position could perhaps be described as that of a cultural liaison, translator, and consultant. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

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

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

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

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

The director did not dispute that the petitioner qualifies as member of the professions holding an advanced degree. The sole issue in contention 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.

The petitioner describes her area of expertise:

After the graduation from [redacted] [with an M.A. degree in Asian Studies], I joined [redacted] a first class international forwarder and U.S. Customs broker. I have been coordinating and promoting the relationship between the employer and employees, the company and its customers--more than several hundred companies and U.S. government agencies. I advised the managing people to up-date the telephone and computer system, and now the employees are happy with this better working condition. I have been giving small language and culture

lessons to the employees and now they can understand why to move goods to or from Asian [sic] sometime is so difficult, and corresponds accordingly. Through my efforts, the company hired more U.S. people despite of the OA of the company.

My work not only benefits [REDACTED] but also benefits the United States as a whole. I gathered world import and export information for customers and advise them what the U.S. needs and other nations need. These, as a result, promote the U.S. trading business. . . .

Since my arrival at the U.S.A. [sic], I have been doing various works, employed or voluntarily, to promote the understanding and communication between nations, which eventually leads to the increasing the employment and working condition, improving the education and training programs, and activating the U.S. economy.

The petitioner asserts that her familiarity with Chinese culture facilitates trade between the U.S. and China. The petitioner compares her role to that of "engine oil" that keeps a motor running smoothly.

Yoshinobu Ichimaru, then vice president of [REDACTED] and manager of its New York branch, states:

[The petitioner] has a strong background of international relation, decent understanding of different culture, excellent interpersonal skill, the ability of different research, judgement, decision making and foreign language. She has applied her knowledge and skills to promote our firm's relationship with client and customer and we are glad that the export from the United States to Japan, Latin America and Europe is increasing due to her work.

[The petitioner] is a highly trained person in promoting the understanding and communication among the people with different culture background.

[REDACTED] now with the Product Support Services division of [REDACTED] states that the petitioner "used to study at the graduate school of the [REDACTED] together with me in [the] department of comparative literature. [REDACTED] states that the petitioner participated in several nationwide conferences of the [REDACTED] and volunteered as a trilingual interpreter at the 1987 Conference of Volunteers in the Pacific Region.

Several of the petitioner's former professors assert that the petitioner was a gifted student; one states that the petitioner

"made many contributions to the mutual understanding and exchange between Japan and China and between Japan and the West."

The petitioner submits copies of magazine articles she wrote, mostly during the 1980s, discussing Japanese cultural issues. The petitioner also submits copies of scholarly writings such as a detailed book review pertaining to 19th century Chinese commerce and a seminar presentation regarding the problems faced by well-educated married women in Taiwan.

The director requested further evidence that the petitioner has met the guidelines published in Matter of New York State Dept. of Transportation. In response, the petitioner has submitted several additional witness letters and a personal statement.

The petitioner states that her position with [REDACTED] demands an ability "to understand the difference between Japanese business culture and the American's, to use Japanese language at ease, to have the knowledge of international relationship and marketing." The petitioner asserts that others, however well-trained, have failed where she has succeeded. The petitioner asserts that she has performed beyond her basic job requirements, voluntarily consulting with businesses seeking to expand into Asia. The petitioner describes herself as "a self-motivated person full of idea [sic]. I discover and create new business route and opportunities."

[REDACTED] apparently [REDACTED] successor as New York branch manager, states that the petitioner "is outstanding because of not only her triangle language skill but also that her decent understanding to the international policy and relationship [sic]." [REDACTED] adds "[w]e expect her to bring more business to the U.S.A.," and that the petitioner "will coordinate and give advice to top management about our business expansion in Great China areas and other Asian areas." [REDACTED] asserts that the U.S. economy will benefit further with every additional office that Hankyu is able to establish overseas, with the petitioner's assistance.

[REDACTED] president of [REDACTED] (where the petitioner formerly worked as a Chinese and Japanese language instructor), states that the petitioner "was a reliable, conscientious instructor" and the institute has "been unable to find another instructor as qualified as [the petitioner] to teach these subjects." [REDACTED] asserts that the denial of this visa petition would "also be a big loss to the American Business Community" (emphasis in original).

Professor [REDACTED] of [REDACTED] had studied alongside the petitioner at the [REDACTED] Prof. [REDACTED] states that the petitioner "utilized her gifted culture background

to act as a go-between among the people with various culture backgrounds. . . . I believe that she will play an important role in promoting economy development and culture communication between the U.S.A. and Asia."

The president of [REDACTED] who has known the petitioner since the petitioner was a graduate student in Japan, states "[s]ince [the petitioner] left Japan for the U.S.A., we have felt a big loss" because the petitioner was unavailable to act as "a multi-language interpreter."

[REDACTED] associate professor and Asian Collection librarian at [REDACTED] states that the petitioner "is the bridge of the East and the West" and that the petitioner's "extremely deep understanding on Japanese and its Culture [sic] allowed her to win students admiration and respect when she substitute my class [sic] on occasion."

[REDACTED] president of [REDACTED], states that the petitioner should receive a national interest waiver because the labor certification process is time-consuming, and during that time the petitioner would be unable to work for other companies (such as [REDACTED] as a consultant.

The director denied the petition, stating that the petitioner's essential skills can be articulated on an application for labor certification. The director also noted that the petitioner's witnesses consist of "professors and/or colleagues or people who stand to benefit from" the petitioner's continued presence in the country.

On appeal, the petitioner submits four additional letters. Counsel states that these letters "prove that the beneficiary's individual contribution is by far greater than that of her peers, which not only impacts her immediate circle of colleagues, employer, clients, but the whole society." Counsel concludes with the assertion that the petitioner "is an outstanding international cultural ambassador whose substantial individual contribution highly surpasses that of her peers, and outweighs the national interest inherent to the process of labor certification."

[REDACTED] vice president of the [REDACTED] states:

[The petitioner's] efforts in enhancing cultural exchange and mutual understanding between the United States and Asian countries has benefited not only specific firms, but the American communities as a whole. . . .

In the pursuit of our goal, [the petitioner] has played [a] very instrumental role.

[The petitioner] has helped our bank in various ways. She voluntarily introduces to our bank . . . those American companies looking for business chances in Japan and need consultation. She helps to bring several banks together when the cooperation is needed among the banks. She gave advice to securities and credit companies searching for joint venture in Asia on the culture and people of Asia.

The above letter lacks specific information about the extent to which the benefits from the petitioner's work extend past those whom she advises. Because [redacted] has availed itself directly of the petitioner's services, a letter from a [redacted] official does not rebut the director's finding that the petitioner's chief impact is with companies to which she has provided services.

[redacted] director of Asian Studies at St. John's University, states that the petitioner "was one of the most outstanding graduate students we have ever had in the past 10 years." Dr. Lin states:

It is notable that in addition to working in an international transport company, [the petitioner] has been playing a very important role as a cultural emissary. She has been very activity [sic] working with many not-for-profit organizations with a view to enhancing better understanding between America and Asia. Her efforts have achieved very highly and have been recognized by people of different walks.

Like other witnesses, [redacted] does not provide specific examples to support the general assertion that the petitioner has improved relations between the U.S. and Asian countries, particularly Japan and China, or to demonstrate the extent to which those relations would be different if not for the petitioner. As with the letter from [redacted] a new letter from [redacted] does not undermine the director's finding that the petitioner's impact has been concentrated within companies where the petitioner has worked and colleges she has attended.

[redacted] vice president of the [redacted] based National Volunteer Activity Promotion Center at the National Council of Social Welfare, who has known the petitioner "ever since she was a student in Shanghai International Studies University," states:

[The petitioner] taught and trained many American employees such as officers and managers in GE Capital and director in Moody's Investment Service. She helped them to understand Asian people and Asian Culture. As a result, GE Capital now has tremendous expansion in Japan. . . .

[The petitioner] is obviously an extraordinary international communicator and volunteer with unusual talent and decent

research and understanding on Asian and American culture, on international relation and communication.

The record contains no evidence from GE Capital, nor any statement from any GE Capital official, to establish the extent to which that establishment credits the petitioner for its expansion in Japan. A general third-party statement cannot suffice in this regard. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

██████████ vice president of both the American Association of Traditional Chinese Medicine ("AATCM") and the United Alliance of New York State Licensed Acupuncturists, states:

[The petitioner] has served as voluntary expert consultant to AATCM for 3 years. Because she possesses unique combined expertise in American, Chinese, and Japanese cultures, she has served as a bridge-builder for us . . . by hosting monthly seminars and lecturing to public about TCM.

Prior to the appeal, the record was silent as to the petitioner's promotion of traditional Chinese medicine. Also, the record does not indicate that the petitioner herself has any formal training or expertise in this field. While the petitioner may be able to make general contributions by virtue of her understanding of the different cultures involved, she has not brought about any advances in the field in terms of developing new treatments or confirming the efficacy of existing ones. The impact of monthly seminars appears to be negligible at a national level.

The petitioner in this case seeks an employment-based visa. The petitioner's activities which are held to be in the national interest must, therefore, derive from the beneficiary's employment. The national interest waiver is statutorily limited to advanced degree professionals and aliens of exceptional ability. The petitioner has not explained why the volunteer work of advanced degree professionals or exceptional aliens should be rewarded with an immigration benefit (i.e., the national interest waiver), when the comparable volunteer efforts of aliens who fall outside this visa classification cannot be so recognized. Therefore, while volunteer work outside of one's job duties is admirable, we cannot fairly consider such efforts when adjudicating an application for an employment-based national interest waiver.

The petitioner has clearly earned the praise of her mentors, clients and employers. The record, however, offers no evidence that the petitioner's impact has extended beyond those individuals and companies. While a cultural liaison can ease international transactions, the petitioner has not shown that her efforts have

had an impact, compared to those of others throughout her field, that is especially significant at the national level. Her work, by its nature, appears to be quite limited in its scope at any given time. The petitioner has provided extensive testimony regarding her skills and training, but there is no direct evidence showing that the petitioner, as an individual, has had a substantial effect on trade between the U.S. and such Asian nations as China and Japan.

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.