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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.
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Washington, D.C. 20536



FEB 28 2003

File: EAC 01 228 53249 Office: VERMONT SERVICE CENTER

Date: FEB 28 2003

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:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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.

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 Administrative Appeals Office 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 seeks employment as a manager/financial analyst at Citibank N.A., a subsidiary of Citicorp. 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 has 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) . . . 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.

The director did not dispute that the petitioner, who holds a Ph.D. in Economics from the City University of New York ("CUNY"), qualifies as a 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, 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.

Counsel describes the petitioner’s work:

[The petitioner] is an outstanding economist in . . . international trade and financial markets, specifically, the economic aspects, with an emphasis on technological trade. The trading area [on which] he focuses his activities is the Asian market. His education and training are unique, and impart to his achievements a singular niche.

Counsel states that the petitioner’s “breakthrough achievements” include laying the basis for foreign investors to be able to wholly own subsidiaries within China; proving “the need for asset valuation in joint ventures, and wholly foreign-owned enterprises”; and demonstrating new uses and limitations for various economic models in certain circumstances. Counsel asserts that the petitioner “has made outstanding contributions and is recognized as being at the top of the field. He has high international stature.”

Along with copies of his published articles and documentation pertaining to his field of research, the petitioner submits letters from six individuals whom counsel deems “eminent authorities in the [petitioner’s] field of expertise.” Five of the six witnesses are CUNY faculty members; all six are on the faculties of universities in New York City. Counsel states that “[CUNY] Professor

██████████ is one of a handful of economists recognized internationally for their monumental contributions to the field. ██████████ is also director of Health Economics at the National Bureau of Economic Research, Inc. ██████████ calls the petitioner “one of the most outstanding student who I have encountered [sic]” at CUNY, and states that the petitioner’s doctoral dissertation “establishes two critical results” dealing with “computational algorithms for pricing financial instruments and empirical tests of the Health-Jarrow-Morton (HJM) model.”

██████████ states that, before his arrival in the U.S., the petitioner “had played for many years a major role in the changing economy of China. ██████████ does not elaborate except to state that “[a]s a member of the China state economics bureau [the petitioner] fought for the need for China to open its markets.”

CUNY Professor ██████████ states that the petitioner “became a leading advocate of free foreign investment in China. . . . That is a change in China that has recently occurred. ██████████ describes the petitioner’s work and asserts that the petitioner “is unique and irreplaceable” and “at the top of our field,” but ██████████ comments are offered in terms of areas that could potentially benefit from the petitioner’s expertise, rather than in terms of specific contributions that the petitioner has made since entering the United States in 1995.

Regarding reforms in China, another CUNY ██████████ indicates that the petitioner had been “a strong voice in the Chinese government for the opening of market [sic] to foreign investments on the same basis as this was then done internationally.” The petitioner had apparently been in the United States for several years when this change took place. The record contains no first-hand evidence to show that the petitioner was in large part responsible for this policy shift. The fact that the petitioner advocated a specific policy, years before the policy’s eventual implementation, does not prove that the petitioner caused the implementation of the policy. While several witnesses assert that the petitioner is responsible for the policy change, the record contains no direct evidence that economists outside of Manhattan credit the petitioner with this development.

The letter of ██████████ contains numerous passages that match, verbatim, the letter of ██████████ including even the same grammatical errors (e.g. “one of the most outstanding student who I have encountered”). The true identity of the author of these shared passages is unknown. A slight variation of one paragraph of ██████████ letter, regarding the acceptance of an article in the *Journal of Futures Markets*, appears verbatim in a third letter by Professor Theodore Joyce, also of CUNY.

The sole initial witness outside of CUNY is ██████████ an associate professor at Manhattan College, where the petitioner taught in 1999-2000. ██████████ assertions are generally similar to those of the above-named CUNY faculty members. ██████████ states that “leading experts consider [the petitioner] to be at the top of the field, a singular voice,” but the initial letters are not first-hand evidence of a reputation outside of the academic community in Manhattan.

The director requested further evidence that the petitioner has met the guidelines published in *Matter of New York State Dept. of Transportation*. The director asserted that the petitioner has only vaguely explained how his work with Citibank will serve the national interest. In response, the petitioner has submitted additional letters, as well as background materials such as press releases from the U.S. Department of the Treasury's Office of the Comptroller of the Currency.

██████████ now a professor at the University of Colorado at Denver, was previously an assistant professor at Manhattan College, where the petitioner worked shortly before the filing of the petition ██████████ states:

Currently, [the petitioner] holds the position of Business Analyst and Manager at Citibank, N.A. In that capacity, he performs work that is critical to the national interests of the United States. He has broad expertise in financial markets, risk management, and computer science. Furthermore he is also a mathematician. Recently he created a model to analyze the profits and losses of new acquisitions for Citicorp to conform to standards set by the U.S. Office of Currency Comptroller (OCC). His model is helping the U.S. to control the total amount of its currency, which is in the national interests of the U.S. In addition, this model is going to be used to examine Citicorp's international business with China, Japan, and Canada. By insuring that financial dealings with these countries are on firm financial footing, his work is contributing to the national interest. . . .

[The petitioner] developed a theoretical model that enables one to calculate the required return rate of return [sic] from the net credit loss rate. Not only can this model be used by Citicorp, but it also can be used by the entire banking sector and by the Office of Currency Comptroller (OCC). The latter agency can use [the petitioner's] model to evaluate risk management strategies of all U.S. banks in order to control the total currency of the U.S. in a more effective manner.

██████████ does not explain how the petitioner's work with a private company "is helping the U.S. to control the total amount of its currency," or that the petitioner, through his work, deals with so substantial a fraction of the U.S.' total currency as to have a significant effect on the U.S. economy. While ██████████ states that the OCC "can use [the petitioner's] model," that does not by any means imply that OCC will in fact use the model, or even that the OCC is aware of it. Speculation that government agencies and private companies may one day use the petitioner's model is not evidence that the model is already "helping the U.S. to control the total amount of its currency." Furthermore, if the OCC has set standards for transactions and procedures, then conformity with those standards is a duty required of every financial institution, rather than a contribution that stands out in the field.

██████████ identified as vice president of Consumer Insights and Programs at J.P. ██████████ and previously an assistant vice president of Citicorp Credit Services, states that the petitioner "is widely known for his breakthrough achievements and I would place him among the top few percent in our field. He plays a key and pivotal role." ██████████ asserts

that the petitioner's theoretical model "is not only a big breakthrough in theory but also has important meaning for the risk management of the banking Industry. Furthermore, this model could substitute the traditional risk management methodology and increase the whole business's efficiency." Like [REDACTED] letter, [REDACTED] letter relies on the speculative assertion that the banking industry will adopt the petitioner's model, and that the model will result in substantial benefit to the U.S. economy. These witnesses, like the initial witnesses, have demonstrable close ties to the petitioner and thus their statements are not first-hand evidence that the petitioner's work has had a significant impact outside of the petitioner's circle of mentors and co-workers.

The director denied the petition, acknowledging the intrinsic merit and potential national scope of the petitioner's work but finding that the petitioner's own contribution does not warrant a waiver of the job offer requirement that, by law, attaches to the classification that the petitioner chose to seek. On appeal, the petitioner submits a brief from counsel.

Counsel argues on appeal that the director "acted in an arbitrary and capricious manner in denying the petition" despite "[s]ubstantial . . . evidence" of the petitioner's national impact, submitted in response to the director's request for additional evidence. That submission consists of letters from two former co-workers and background evidence from OCC and Citicorp which contained no mention at all of the petitioner or his work.

Counsel protests that the petitioner's witnesses are "prominent" and "world-renowned" and therefore their assertions carry great weight. The record contains little if any independent evidence of the prominence or renown of the petitioner's witnesses, and even then it is significant that the only prominent or world-renowned witnesses who appear to have anything to say about the petitioner's work are the petitioner's former professors and former co-workers. Counsel emphasizes the "key role" of the "Office of Currency Comptroller," but there is no evidence at all in the record that any OCC official is even aware of the petitioner's model, let alone has shown interest in implementing it. We note that OCC documents in the record identify the agency as the Office of the Comptroller of Currency, but the witnesses routinely misstate the name as "Office of the Currency Comptroller," which is exactly what counsel calls the OCC.

Counsel discusses the role of Citicorp in international trade, but the record contains nothing from Citicorp or Citibank that would specify the significance of the petitioner's role within Citibank. The mere fact that the petitioner, like thousands of others, is employed by a major international corporation is not *prima facie* evidence of eligibility for a national interest waiver. Indeed, the record contains nothing at all from any Citibank or Citicorp official, nor even any objective evidence of the petitioner's own employment there.¹ Key assertions, such as the claim that the petitioner is largely responsible for major economic reforms in China, are not substantiated by any objective documentary evidence. The petition relies almost entirely on the assertions of current and former professors and co-workers, and background evidence that does not mention the petitioner. Published articles and conference presentations by the petitioner establish that the

¹ This is not to imply that we presume that the petitioner does not work for Citibank, but rather to illustrate the dearth of evidence to support even the petitioner's most basic assertions.

petitioner has been an active researcher in his field, but the very existence of such materials does not show that the petitioner's research has had more impact, influence, or real-world consequences than the articles and presentations of countless other economists.

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, 8 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.