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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
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Washington, DC 20536

[REDACTED]

SEP 26 2003

File: EAC-98-269-52952 Office: Vermont Service Center Date:

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)

ON BEHALF OF PETITIONER:

[REDACTED]

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 Citizenship and Immigration Services (CIS) 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

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 an alien of exceptional ability or as a member of the professions holding an advanced degree. The petitioner seeks to employment as an import/export specialist, buyer. 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. It is not clear whether the director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree. The director clearly concluded, however, 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) . . . the Attorney General may, when the Attorney General 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.

Neither the statute nor pertinent 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 the 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 Dep't. of Transp., 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.

The director did not address whether the petitioner has established that he works in an area of intrinsic merit or whether the proposed benefits of his work would be national in scope. We find that the petitioner does work in an area of intrinsic merit, international trade. The record does not establish that the petitioner seeks a position where his impact would be national in scope. The petitioner seeks to work for a single mail order company. On appeal, the petitioner's employer, S&S Worldwide, asserts that the petitioner's impact will be nationwide because since hiring him, they have expanded their operations by purchasing equipment from out of state and hiring three employees in California and Illinois. Nevertheless, while the petitioner might be able to improve exports for his employer, we cannot conclude that this proposed benefit will have an impact that will substantially affect U.S. exports at a discernable level nationwide.¹

It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. The record contains articles regarding the significance of international trade to the U.S. economy, and more specifically, trade with China. The importance of trade to the national interest is not in question. Eligibility for the waiver, however, must rest with the alien's own qualifications rather than with the position sought. In other words, as stated by the director, we do not accept the argument that a given area of work is so important that any alien qualified to work in this area 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,

¹ This conclusion is similar to the conclusion 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.

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 219, n. 6. The director essentially concluded that the record only established that the petitioner's colleagues believed him to have unique qualifications, a claim that should be tested by the labor certification process. We will consider the evidence.

██████████ the petitioner's doctoral advisor at the University of Cincinnati, asserts that the petitioner's doctoral thesis combined the Chamberlinian approach, the multinomial logit model (MNL), and the nested MNL model of discrete choice theory to show for the first time that "the love of variety is also a very strong incentive for international trade." Professor ██████████ asserts that this work "may have the potential to contribute to the solutions of important trade problems" and "has a good chance to be published." Professor ██████████ speculation that the petitioner's unpublished thesis might eventually be published and contribute to the field is not evidence that the petitioner has already demonstrated a track record of success with some degree of influence on the field. ██████████ another professor at the University of Cincinnati, asserts that the petitioner's dissertation is the only one he has seen "where the model provides useful insights in a multinational setting." Professor ██████████ asserts that the petitioner can serve as "an important bridge" between the U.S. and China, noting his knowledge of the Chinese language and culture in addition to his "business and economic acumen."

██████████ a merchandising specialist for Fire Mountain Gems, asserts that the petitioner showed strong problem solving skills by adopting a new packaging method while working with Ms. ██████████ on a hand-carved marble fireplaces project. Ms. ██████████ asserts that this project "may have potentially improved the packaging quality for the whole stone industry." Assuming this speculation is accurate, Ms. ██████████ does not explain how the petitioner's impact on packaging of stone relates to his claim that his skills in economics will have a positive national impact on trade with the Far East.

██████████, President of RGT International, Inc., asserts that he imported exercise equipment through Window of China, Inc. while the petitioner was an employee with that company. Mr. ██████████ discusses the importance of international trade and the shortage of trade experts in the United States. Mr. ██████████ asserts that the petitioner's business experience in China in combination with his education in the United States make him a valuable expert in the field. The labor certification process already exists to address shortages in a given field. Thus, the national interest waiver is not warranted based on a shortage of qualified workers. *Id.* at 218. In a new letter submitted on appeal, Mr. ██████████ asserts that the petitioner's current work in opening Chinese markets to U.S. goods "would definitely assist RGT and many other U.S. companies." Mr. ██████████ does not explain this statement in light of his previous letter implying that RGT is an import, not an export, company.

██████████ Director of the Foreign Trade Development Division of the International Co-Operation Department of the Ministry of Machinery in China, asserts that the petitioner was a "rare talent" as a teenaged intern at the division. Mr. ██████████ further asserts that the petitioner

subsequently became the youngest Deputy Manager of the China National Machine Tool Corporation where he was responsible for trade projects involving Japan, Hong Kong, Korea, Malaysia, England and France. [REDACTED] President of the China National Machine Tool Corporation and Chief Executive Officer of the Sino Machine Industrial Group, provides similar information, adding that the petitioner was recognized as "Most Valuable Employee" two years in a row. Both Mr. [REDACTED] and Mr. [REDACTED] assert that the petitioner's experience, education, and network of contacts will allow him to contribute to the U.S. economy. [REDACTED] General Manager of Brilliant Fine International, Ltd. in Hong Kong, asserts that China National Machine Tool Corporation was one of his biggest clients and that the petitioner made many large-scale business transactions possible.

[REDACTED] International Marketing Director for the petitioner's employer, S&S Worldwide, asserts that the petitioner's expertise, unique skills, and education are vital to the company's growth. Mr. [REDACTED] describes the petitioner's duties for S&S Worldwide, including locating products in the Pacific Rim to cut down costs, collect new products for the company's catalogue, purchasing and negotiating credit terms, supervising overseas productions and arranging quality control, arranging international shipping, and coordinating exports and international sales. Mr. [REDACTED] further asserts that the petitioner is expected to use his "network of contacts" to prevent or solve problems that may arise. In a subsequent letter, Mr. [REDACTED] reiterates the above claims, asserting that the petitioner has already benefited S&S Worldwide and that he has "an increasingly influential role" at the company. Mr. [REDACTED] does not explain how the petitioner has influenced the field of international exports.

In response to the director's request for additional documentation, the petitioner submitted a letter from Congressman Sam Gejdenson asserting that the petitioner's work as a senior buyer for S&S Worldwide "will benefit the national interest of the U.S. economy." Congressman Gejdenson goes on to assert that the petitioner's dissertation, education, fluency in Chinese, and three years of experience in exporting U.S. goods are the basis of his conclusion. On appeal, the petitioner, through counsel, submits a similar letter from Congressman Gejdenson. While we accord Congressman Gejdenson's opinion due respect, it remains that experience, education and, in most cases, language skills, are qualifications that can be listed on an application for labor certification. Congressman Gejdenson's letter does not explain why waiving the labor certification process for the petitioner is in the national interest.

On appeal, the petitioner submits two new letters. The first letter is from a client of S&S Worldwide asserting that it has had increased printing business from S&S Worldwide. The second letter is from a business owner who appears to have never previously heard of the petitioner but, from reviewing the petitioner's credentials, feels that he might benefit from the petitioner's contacts. These letters fail to establish the petitioner's influence on the field of international trade.

The record is mostly supported by letters from the petitioner's friends and immediate colleagues. While such letters are important in providing details about the petitioner's role in various projects, they cannot by themselves establish the petitioner's influence over the field as a whole. The

record does not include letters from high-level officials at relevant U.S. government agencies or prestigious U.S. trade organizations explaining the petitioner's influence on the field and the national benefits of that influence.

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.

Beyond the issue of the national interest waiver, on page two of the director's decision, he concluded both that the petitioner had not established that he qualified for the classification sought and that he had done so. We find that he has not. Nowhere does the petitioner establish that he is an alien with exceptional ability or an advanced degree professional. While the petitioner clearly has an advanced degree, a Ph.D. in Economics, he has not established that he works in a "profession" as defined in the Act and pertinent regulations.

Section 101(a)(32) of the Act provides:

The term "profession" shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.

8 C.F.R. § 204.5(k)(2) provides, in pertinent part:

Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.

The petitioner's position as listed on his resume is that of "Import/Export Specialist, Buyer." Congressman [REDACTED] describes the petitioner as a "senior buyer." According to the 1998-1999 Occupational Outlook Handbook, while many employers prefer to have buyers with baccalaureate degrees, no degree is universally required for the occupation. Thus, the petitioner has not established that the position he seeks is a profession as defined above.

As the petitioner has not established that he is an advanced degree professional, we will briefly review the record for evidence of exceptional ability. The regulation at 8 C.F.R. § 204.5(k)(3)(ii) sets forth six criteria, at least three of which an alien must meet in order to qualify as an alien of exceptional ability in the sciences, the arts, or business. These criteria follow below.

The regulation at 8 C.F.R. § 204.5(k)(2) defines 'exceptional ability' as 'a degree of expertise significantly above that ordinarily encountered.' Therefore, evidence submitted to establish

exceptional ability must somehow place the alien above others in the field in order to fulfill the criteria below; qualifications possessed by every member of a given field cannot demonstrate 'a degree of expertise significantly above that ordinarily encountered.' The criteria are as follows.

An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability

As stated above, the petitioner has a Ph.D. in Economics. Thus, the petitioner clearly meets this criterion.

Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought

On his resume, the petitioner does not claim any employment prior to 1991 when he graduated from the University of Science and Technology in China. Thus, the petitioner does not claim to have ten years of full-time employment as of the date of filing, September 23, 1998. While the petitioner submitted a letter indicating he worked as an intern in 1988, the letter does not indicate that it was full-time employment.

A license to practice the profession or certification for a particular profession or occupation

The record does not contain any licenses to practice in the petitioner's field.

Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability

The record contains no evidence regarding the petitioner's past remuneration or evidence as to how his remuneration compares with others in the field.

Evidence of membership in professional associations

The record contains no evidence of memberships.

Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations

As stated above, [REDACTED] asserts that the petitioner was recognized as "Most Valuable Employee" two years in a row at the China National Machine Tool Corporation. The petitioner did not submit the certificates for this recognition. Even if we determined that the petitioner met this criterion, the petitioner has not established that he meets the requisite three.

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.