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U.S. Citizenship
and Immigration
Services

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FILE: ~~WAC 03 13~~ 50283 Office: CALIFORNIA SERVICE CENTER Date: DEC 03 2004

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)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California 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 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.

(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.

The petitioner's initial cover letter asserts that his research ability is exceptional, although he does not explain how he meets the regulatory criteria for aliens of exceptional ability set forth at 8 C.F.R. § 204.5(k)(3)(ii). While the director appears to have touched on the issue of whether the petitioner can meet the regulatory criteria for that classification,¹ the issue is moot because the record establishes that the petitioner holds a Ph.D. in Economics from Ohio State University (OSU). The petitioner's occupation falls within the pertinent regulatory definition of a profession. Thus, as acknowledged by the director, the petitioner qualifies as a member of the

¹ The director, however, discusses awards, contributions of major significance and memberships in organizations that require outstanding achievements of their members, all criteria for aliens of extraordinary ability pursuant to 8 C.F.R. § 204.5(h)(3). The relevant regulations relating to aliens of exceptional ability are at 8 C.F.R. § 204.5(k)(3)(ii) and should be evaluated as to whether the evidence is indicative of "a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business." See 8 C.F.R. § 204.5(k)(2)(definition of exceptional ability).

professions holding an advanced degree.² 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 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.

We concur with the director that the petitioner works in an area of intrinsic merit,³ economics, and that the proposed benefits of his work, improved understanding of business cycles and the causes of our trade deficit

² *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215 (Comm. 1998) holds that aliens seeking a national interest waiver as advanced degree professionals must still demonstrate that “the benefit which the alien presents to his or her field of endeavor must greatly exceed the ‘achievements and significant contributions’ contemplated in the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F).” Nothing in that case, however, suggests that advanced degree professionals must meet the other regulatory criteria for aliens of exceptional ability. Such a holding would make the statutory extension of national interest waivers to advanced degree professionals meaningless.

³ On appeal, the petitioner asserts that the director “disregarded evidence on the intrinsic merit of what I am doing.” On the contrary, the director acknowledged that the petitioner works in an area of intrinsic merit. Consistent with *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 217, however, the director noted

with China, would be national in scope. 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 ample evidence relating to the importance of the petitioner's area of research. As stated in *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 217, and by the director in his final decision, however, 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 219, n. 6.

As stated above, the petitioner obtained his Ph.D. in 2001 from OSU and subsequently accepted an assistant professor position at the University of Hawaii at Manoa (UHM). The petitioner claims that his accomplishments in two specific areas constitute a sufficient history of achievement to warrant a waiver of the job offer requirement in the national interest. First, the petitioner asserts that his research on U.S. household responses to business cycles produced significant results and relied on a new econometric technique that did not rely on "detailed household survey data on durable goods purchase and resale," which is difficult to obtain. Second, the petitioner asserts that his research on the wage structure in China has garnered him a "nationwide reputation." As examples of this reputation, the petitioner asserts that he was invited to present his work at the prestigious U.S. National Bureau of Economic Research conference and that his work appeared and was accepted for publication in highly ranked journals and was cited by Nobel laureate James Heckman.

Paul Evans, the petitioner's thesis supervisor at OSU, rates the petitioner as one of the top two students he has known in 15 years as a professor. Such general praise, however, is not useful in determining the petitioner's influence on the field. [REDACTED] asserts that the petitioner "devised a new method for analyzing data on individual holdings of automobiles in order to determine how much automobile sales are likely to be in the future." [REDACTED] explains that such sales contribute to economic fluctuations and understanding their causes could help the Federal Reserve ameliorate such fluctuations. The petitioner's Ph.D. thesis focused on this topic and he presented this work at a conference in Ohio, but, as of the date of filing, he had not published his results in this area.

Professor Evans further asserts that he and the petitioner have begun to look at historical data with a focus on what the Federal Reserve can do to avoid deflationary expectations that push interest rates to zero. Once again, while Mr. Evans and the petitioner completed a "working paper" in this area, as of the date of filing, they had not published their results in a peer-reviewed journal. The petitioner does not explain how this work could have influenced the field without publication in a widely distributed journal.

Belton Fleisher, a professor at OSU and the petitioner's coauthor, discusses the petitioner's research on dealing with "ways in which Chinese enterprises, both collectively and state owned[,] engage in wage and employment policies that contribute to the effective use of human resources and to their productivity." Professor Fleisher explains that these policies make the Chinese "formidable competitors of United States manufacturers in the

that working in an area of intrinsic merit, while necessary for a national interest waiver, is not sufficient by itself.

global market” and that the petitioner’s research “can be used by U.S. business executives to gain insight into some of the ways that the Chinese firms are effectively competing with us in global trade.” At the time of filing, one of the petitioner’s articles on this topic had been published and another two had been accepted for publication.

Professor Fleisher also notes that the petitioner has been working on improving “our understanding of the relationship between malnutrition and growth among the developing nations of the world.” While Professor Fleisher acknowledges that he is not involved in this work, he notes that it is supported by the Food and Agricultural Organization of the United Nations.

The final letter submitted initially, from [REDACTED] Chair of the Economics Department at UHM, provides similar information. While Professor [REDACTED] asserts that the petitioner’s work is insightful and contributes to our understanding in this area, she concludes only that his results “should help both U.S. business executives and U.S. government officials respond more effectively to the Chinese economic challenge.”

In response to the director’s request for additional evidence, the petitioner submitted a letter from [REDACTED] Director of UHM’s Center for Chinese Studies [REDACTED] asserts that the petitioner is the center’s only Chinese economist and asserts that it will be difficult to move the petitioner through the tenure process, and thus retain him, without a national interest waiver. Nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process.

[REDACTED] President of the East West Center in Honolulu Hawaii, asserts that the center is one of the leading federal institutions conducting research on the Chinese economy, providing analysis for the U.S. Agency for International Development, Department of State, U.S. trade representatives, Congress, and the Environmental Protection Agency. [REDACTED] asserts that the petitioner frequently collaborates with the center and that the center has benefited from the petitioner’s “expertise with respect to China’s labor markets.”

The petitioner also submitted letters from more independent sources [REDACTED] Vice President and Head of Macroeconomic Research at the Federal Reserve Bank of San Francisco, asserts that he is “impressed by the number of high quality research papers that [the petitioner] has produced in a relatively short period of time.” [REDACTED] asserts that the petitioner’s research areas, the consumption of durable goods such as automobiles and an analysis of low interest rates, are important to the Federal Reserve. [REDACTED] does not assert that the Federal Reserve has adopted or otherwise considered using the petitioner’s methods.

[REDACTED] Director of the College of Security Studies at the Asia-Pacific Center for Security Studies in Honolulu, asserts that China’s economic growth is a top-level interest among the government officials from the Asia Pacific region who participate in the center’s professional and educational programs [REDACTED] asserts that the petitioner has unique capabilities in this area being an outstanding economist and a citizen of China. We do not believe that Congress intended the national interest waiver to serve as a blanket waiver for competent economists who happen to have been born in China. The relevant question is whether the petitioner can demonstrate that he has already influenced the field at the national level. [REDACTED] concludes that government agencies, educational institutions, and private sector research organizations in the United States will increasingly seek out the petitioner’s counsel [REDACTED] does not, however, assert that his center has previously sought the petitioner’s counsel or elaborate on past examples of the petitioner’s influence. [REDACTED] also does not indicate that he had ever heard of the petitioner or his work prior to

being contacted for a reference. While the petitioner need not demonstrate acclaim in the field, letters from independent experts who were aware of the petitioner's influence in the field prior to being contacted for a reference are the most persuasive letters.

The petitioner also submitted two letters from U.S. Congressmen, both representing districts in Hawaii. Both attest to the importance of the petitioner's area of research but neither one asserts that the petitioner's work has influenced U.S. policy on China or that they had ever heard of the petitioner's work prior to being contacted for a reference.

The petitioner also submits a letter from [REDACTED] Service Chief of the Agricultural and Development Economics Division of the Food and Agricultural Organization (FAO) of the United Nations (U.N.). [REDACTED] asserts that the petitioner was contracted to work on two projects for the U.N. The mere fact that the petitioner was contracted to work on U.N. projects does not mandate a finding that the results were influential in the field. While the petitioner's contract indicates that the second project, scheduled to end only a month prior to the filing date of the petition, "may" allow the FAO "to draw the policy implications for achieving the goals of the World Food Summit of 1996 [REDACTED] does not explain how the petitioner's work on these projects influenced the field or, in fact, even claim that it did so.

[REDACTED] Graduate Program Coordinator at OSU, describes the petitioner's scholarships, fellowships, recognition for graduate teaching, and travel grants received by the petitioner during his term of study at OSU. On appeal, the petitioner asserts that the director improperly dismissed these accomplishments. Specifically, he states that they were in recognition of past achievements. Scholarships and fellowships based on academic achievements cannot satisfy the national interest threshold. *See generally Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 219, n. 6. Moreover, recognition from one's peers is one of the criteria for aliens of exceptional ability, a classification that normally requires a labor certification. We cannot conclude that meeting one criterion, or even the necessary three criteria, warrants a waiver of that requirement.

The petitioner and many of his references note the petitioner's publication history as evidence of his past achievements. As of the date of filing, only one of the petitioner's articles had been published. The petitioner notes that this paper was cited extensively in a working paper by [REDACTED]. A review of the working paper reveals that [REDACTED] cited the petitioner's work because the petitioner had analyzed the data relevant to [REDACTED] subject [REDACTED] does not indicate that the analysis was groundbreaking. In fact, he states that the petitioner's methodology underestimated the rate of return to education, the focus of [REDACTED] discussion. The record contains no other evidence of citations. Thus, the petitioner did not establish that his work is widely cited.

Although some of the petitioner's unpublished manuscripts were authored by him alone, the director stated that the petitioner's work was the result of a collaboration. On appeal, the petitioner correctly notes that most research is the result of a collaboration and co-authorship should not diminish the contributions of each author. While we agree with that principle, the petitioner's authorship of original work, most of which was unpublished as of the date of filing, is insufficient to warrant a waiver of the job offer requirement in the national interest. Despite the petitioner's contention that his research and publication go beyond his job duties as a professor, the information submitted on appeal documents the large number of journals in his field. It is clear that many economists do publish their research. Relevant considerations include not only the prestige of the journal in which the article appeared, but also, more importantly, the influence of that

particular article. The director noted the lack of evidence that the petitioner has been widely cited and the petitioner does not rebut that conclusion on appeal.

The petitioner also relies on his conference presentations, asserting that he has presented his work at the top conferences in his field. As with the published material, however, the record lacks evidence regarding the impact of the petitioner's particular presentation, independent of the conference itself. Conference proceedings are often published, yet the record contains no evidence that other economists have cited the petitioner's presented results.

The record shows that the petitioner is respected by his colleagues and has made useful contributions in his field of endeavor. It can be argued, however, that most economic research, in order to receive funding, must present some benefit to the general pool of economic knowledge. Any Ph.D. thesis or scholarly research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who obtains a Ph.D. or is working with a government grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement. The record does not establish that, at the time of filing, the petitioner's work represented a groundbreaking advance in economics. At best, the petition was filed prematurely, before the majority of the petitioner's work completed at the time had been published and, thus, subject to review by independent experts in the field. Once published, the influence of the petitioner's work would be verifiable, for example, through evidence of significant citations by independent 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.