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U.S. Citizenship
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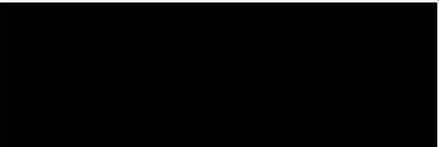


FILE: EAC 00 087 52130 Office: VERMONT SERVICE CENTER Date: FEB 10 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

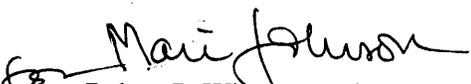
PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



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, 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 in business. The petitioner is president of Shanxi Silkwear Export & Import (USA), Inc. 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 sole issue in the director's decision 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 the 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 regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now Citizenship and Immigration Services (CIS)] 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 and background:

In 1978, [the petitioner] was among the first Chinese official [trade] delegations, who visited the United States. . . . In 1986, [the petitioner] co-authored two important books . . . [which] soon became the most widely used books in China. . . .

As a particular honor, [the petitioner] was appointed as Director of the Department of Foreign Trade & Economy Shangxi Province. . . . This is unequivocal, national recognition of [the petitioner's] achievement in this field. . . .

[The petitioner] subsequently switched from public service to private industry. His outstanding talents, coupled with his unique experience, preeminent expertise and strong connection with [the] Chinese government, have put him in an almost singular category and enabled him to make lasting, important contributions to [the] U.S. economy. . . . [The petitioner] has helped many American companies expand their export to us [sic] or established their joint venture in China. He has facilitated many Chinese firms to establish their U.S. subsidiaries and invest in American market. His efforts have substantially impacted, not only one or few specific business entities, but U.S. international trade community as a whole. . . . [H]is contribution is recognized and praised by U.S. Senate and House of Representative [sic]."

There is no evidence that the petitioner has received any formal recognition in the name of either the Senate or the House of Representatives. The petitioner has submitted letters from one Senator and one Representative, but these officials give no indication that they are writing on behalf of the entire Senate or House of Representatives, or that either house of Congress has, as an official body, endorsed the petition.

Various business officials state that the petitioner has helped their companies [REDACTED] president of Asia Great Enterprises, Inc., Bayside, New York, states that the petitioner's "outstanding expertise in Chinese banking law and strong connection[s]" enabled the company to "set up a proposal with [a] \$20 million loan from China for manufacturing failures [sic]. . . . This project will create at least 60 job opportunities for Americans and will bring significant economic impact."

[REDACTED] president of Great Pacific U.S.A., Inc., Melville, New York, states:

Great Pacific U.S.A., Inc. is one of the leading companies in North America in the field of transportation equipments. . . . We have been trying very hard in entering [sic] China's market in [the] past 10 years. However, our progress was very slow before we encountered [the petitioner] in early 1998. . . . [The petitioner] successfully helped us to gain [a] permit for a major project, for which the total investment will be \$50,000,000.00.

Heads of other New York-based businesses offer similar letters, as do officials of companies in China. [REDACTED] president of Amway's Chinese branch, states that the petitioner managed to secure Amway an exemption from a Chinese law banning "pyramid selling schemes," enabling the company to accumulate an annual sales volume in excess of \$150 million. The letters all share some similarities in format (such as photocopied or computer-generated letterhead), and none of them include documentary evidence to support the claims within those letters. Several of the letters, from witnesses both overseas and in the United States, contain grammatical irregularities as well.

The director requested further evidence to establish that the petitioner meets the guidelines published in *Matter of New York State Dept. of Transportation*. In response, the petitioner has submitted letters from several individuals connected with the Chinese-American community in New York. One letter, from the Flushing Chinese Business Association, ends with the closing:

Sincerely,

President, [REDACTED]

Mr. [REDACTED] name was clearly added after the fact to the letter after it had been composed and printed. If Mr. [REDACTED] was indeed the author of this letter, it is unclear why he originally included his title but not his name. The various irregularities, and peculiar similarities, among the witness letters raise some questions as to their origin. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988).

The petitioner also submits two New York-based Chinese-language publications. The October 14, 2000 issue of the *Asian-American Times* includes an article by the petitioner, discussing the implications of China's admission into the World Trade Organization. The September/October 2000 issue of the magazine *U.S. Digest* includes an article about the petitioner. Counsel calls *U.S. Digest* "the most prestigious Chinese magazine based in New York with **worldwide circulation**" (emphasis in original), but the record contains no corroboration for this claim. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Both of the above articles appeared after the director issued the request for evidence on August 25, 2000. There is no evidence that the petitioner had garnered any media attention until after the director observed that the petitioner's impact appears to be limited. We cannot ignore the timing of the appearance of these articles, especially when questions remain concerning other submissions. Because they did not exist as of the petitioner's January 31, 2000 filing date, they cannot retroactively establish the petitioner's eligibility as of that date, pursuant to *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971), which indicated that a beneficiary of an employment-based immigrant visa petition must be eligible as of the petition's filing date.

In any event, despite claims regarding the national importance of the petitioner's business achievements, there is no evidence that the petitioner's work has attracted any coverage outside of New York's Chinese-American community.

The director denied the petition, stating that the petitioner has submitted insufficient evidence to establish that he stands apart, to any significant degree, from other individuals involved in international trade. The director stated that the petitioner's success in his chosen field is not *prima facie* evidence of eligibility for a national interest waiver.

On appeal, counsel asserts that the director's findings "are **abusive and totally unfounded**," requiring an unreachable standard of proof. Certainly, some elements of the director's decision rely on an unrealistic standard, such as the assertion that the petitioner must show that "only this beneficiary" is capable of benefiting the United States to the degree claimed in the petition. To this extent, the director erred and deviated from the standards in the statute, regulations, and case law. That being said, it is clear from the director's decision that the outcome did not rest wholly or in large part on this standard. We note, for instance, the director's statement that the record contains "[i]nsufficient evidence . . . setting [the petitioner] apart from other professionals" to a degree that would warrant a waiver.

Counsel argues that the petitioner has adequately demonstrated "that his **individual contribution to the United States is substantially greater than that of the majority of his peers**." The record, however, offers minimal basis for comparison between the petitioner and others in the field. Several clients describe work that the petitioner has done on their behalf, but these assertions do not demonstrate that the petitioner's achievements differ significantly from those of others in the field.

The director, in denying the petition, only briefly addressed the issue of whether the petitioner qualifies for the underlying immigrant classification. The director's sole statement in this regard was "the beneficiary is the holder of an advanced degree." The petitioner, however, holds only a baccalaureate degree, and does not claim to be a member of the professions holding an advanced degree. Counsel asserts that the petitioner seeks classification as an alien of exceptional ability.

CIS regulations at 8 C.F.R. § 204.5(k)(3)(ii) establish the criteria that an alien must meet to qualify as an alien of exceptional ability:

To show that the alien is an alien of exceptional ability in the sciences, arts, or business, the petition must be accompanied by at least three of the following:

(A) 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;

(B) 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;

(C) A license to practice the profession or certification for a particular profession or occupation;

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

(E) Evidence of membership in professional associations; or

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

Counsel's discussion of the petitioner's claim of exceptional ability is limited to four points:

- a) [The petitioner] has been the instructor at Shanxi Foreign Trade & Economics Vocational School, teaching the course of "Trade and Business Management."
- b) [The petitioner] has authored the landmark book "A Comprehensive Book on Foreign Trade and Economics," which was published by Shanxi People's Publishing Company in 1987.
- c) [The petitioner] served, from 1986 to 1995, as the Executive Quota Authorized Signatory (Director) in accordance with China-U.S. Bilateral Textile Trade Agreement. . . . [The petitioner] has remarkably assisted various American firms to either expand their export volumes to China or establish joint ventures there. He has also facilitated many Chinese firms to develop business in United States.
- d) [The petitioner] holds the bachelor's degree in business administration.

Counsel does not explain how the above points fulfill at least three of the six regulatory criteria listed above. Counsel simply lists the above four points under the heading "[the petitioner's] exceptional ability." We note that the regulations require evidence to fulfill the criteria, rather than simply a series of claims that have some relation to those criteria.

The petitioner has been active in the import/export business, first as a government official and then as a private businessman, but the record as a whole does not persuasively show that the petitioner's impact in this area has been so significant as to warrant the special benefit of a waiver of the job offer requirement that, by law, normally attaches to the immigrant classification that the petitioner chose to seek. 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 petitioner has also failed to present a fully coherent claim of exceptional ability.

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.