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FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date: JAN 08 2008

EAC 05 258 51709

IN RE:

Petitioner:

[Redacted]

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:

[Redacted]

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter 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 financial researcher¹ at RBS Greenwich Capital, Greenwich, Connecticut. 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:

(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 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 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).

¹ On the Form I-140 petition, the petitioner listed the SOC (Standard Occupational Classification) Code of his occupation as "19-1042." This is clearly an error; the stated code corresponds to "medical scientists, except epidemiologists." On another form filed by the petitioner (Form G-325A, Biographic Information), the petitioner listed his occupation as "analyst." The SOC Code for "financial analysts" is 13-2051.

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] 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 (Commr. 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 also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines “exceptional ability” as “a degree of expertise significantly above that ordinarily encountered” in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

In an introductory statement, counsel described the petitioner’s work and argued that the petitioner deserves a national interest waiver:

[The petitioner] is an award-winning expert from China, who, utilizing his dual expertise in both American financial market and Chinese banking system, has substantially enhanced U.S.-China economic and financial cooperation. [The petitioner’s] individual contributions in fostering and facilitating U.S. China economic ties are internationally recognized and not to be paralleled by his American counterparts.

. . . [The petitioner] demonstrated his extraordinary research abilities and leadership from 1995 to 2003 while he worked for China Foreign Exchange Trade System (CFETS), a

subsidiary of People's Bank of China (China Central Bank). . . . He led a 15-person technical team to support the establishment of Shanghai Gold Exchange, China's first and major step to free its world's largest gold market. . . . He also established a research team for the design implementation of Intranet RMB (Chinese currency) trading system integrating the original currency lending and bond trading systems into one. [The petitioner] has also authored many important articles in prestigious journals and trade publications such as China Money. His published papers have been very well received and become hot target of frequent discussions. [The petitioner] was honored with several national awards . . . [and] was promoted to the position of **Deputy General Manager** of Technical R&D Department, CFETS. . . .

While in the U.S., [the petitioner] has focused his career in facilitating and fostering U.S.-China economic ties and has accomplished "milestone achievements." . . . [The petitioner] is uniquely able to serve as bridge to communicate, negotiate and consummate a milestone agreement between China (China Central Bank and CFETS) and The Chicago Mercantile Exchange (CME), one of the preeminent future exchanges in the world. This event was widely reported by all major media including Dow Jones Newswires, Forbes, and China Money. **Standing at the signing ceremony, were, among others, [the petitioner] and Mr. John Snow, U.S. Treasury Secretary who commented: "This memorandum of understanding represents a significant milestone on China's path toward greater exchange rate flexibility. . . . It is best for the global system, for the United States."** Clearly, [the petitioner] has significantly benefited our national economy.

(Emphasis in original.) Counsel asserted that a national interest waiver is in order because labor certification focuses on minimum qualifications and "does not take into consideration . . . individual talents and ability." Counsel also contended that the petitioner "is an outstanding player in both American and Chinese markets."

The petitioner submitted copies of various award certificates, but no objective documentation (such as news articles or reference works) establishing the significance of those accolades.

The initial submission included several witness letters, examples of which we shall discuss here. [REDACTED], President of the Shanghai Gold Exchange (SGE), stated:

I first met [the petitioner] soon after I was appointed to take charge over the preparatory work for SGE in 2001. [The petitioner] led a 15-person team [f]rom China Foreign Exchange Trade System to provide all of the business and technical support. Before that he was already known to me as an outstanding technical expert who actively participated in the development of China's FX exchange and interbank bond trading activities.

Throughout our professional encounters, I have been impressed with his extraordinary ability to think in big picture and deliver valuable advices and solutions with details. Many of his suggestions proved pivotal in our later efforts in increasing market liquidity and integrating SGE with the international gold market. Within a mere 5 months, the combined efforts of our

organizations completed a simulated test run, which was significantly ahead of the expected schedule. A majority of this is attributed to [the petitioner's] contribution.

[REDACTED], Director of Financial Research and Product Development at the Chicago Mercantile Exchange, describes the petitioner's work during a summer 2004 internship at the Exchange:

[The petitioner] conducted a comprehensive analysis for us pertaining to the feasibility of listing various types of financial instruments, including futures based on the Chinese currency and various types of equity indices. Specifically, myriads but rapidly evolving restrictions currently in place in China renders the evaluation process a non-trivial endeavor. [The petitioner] was able to provide us with important information regarding the capital accounts restrictions, the laws and directives governing the business operations of domestic and foreign commercial banks, its nascent financial derivative markets, as well as the operations of its foreign exchange market. Due to his previous tenure at the China Foreign Exchange Trading System (CFETS), his knowledge in these areas should prove to be superior even within China. I have no doubt that there are few people in the US with comparable knowledge to the extent [the petitioner] possesses.

The petitioner submitted examples of press coverage of the memorandum of understanding between CFETS and the Chicago Mercantile Exchange. The articles do not appear to mention the petitioner.

[REDACTED], Executive Editor-in-Chief of *CHINAMONEY* magazine, stated that the petitioner "has authored a number of articles for us," two of which, published in late 2001, "were commented favorably by readers" (*sic*).

On May 20, 2006, the director issued a request for evidence, stating that the petitioner had "not shown that his work has already had a national or far-reaching impact. . . . It must be shown that his work achievements distinguish him from other financial consultants." The director also requested evidence of citation of the petitioner's published work, stating that publication alone does not establish the significance of the petitioner's work. Finally, the director stated "greater weight will be given to documentation submitted by experts and institutions that are clearly independent of" the petitioner.

In response, counsel stated: "unlike most scientists whose recognition may be evidenced by citations of his work, the self-petitioner is a business professional whose work/publications have been widely implemented by others, by adopting his work into their systems/portfolios. Although there is no citation, other evidence showing widespread implementation of petitioner's work does exist."

The petitioner submitted additional witness letters. [REDACTED], Managing Director of the Fixed Income Division, Hua An Fund Management Co., Ltd., credited the petitioner with "the introduction . . . of American financial instruments such as bond repo, commercial paper and other money market instruments" during the petitioner's former tenure at CFETS. In a similar vein, [REDACTED], President of the Financial Business Group, Shanghai Fudan Kingstar Computer Co., Ltd., stated that the petitioner "was the designer of the NASDAQ-style inter-bank bond trading system, which was the first in China's financial markets to apply

distributed computation in order to processing.” These witnesses seem to indicate that the beneficiary contributed to China’s economy by introducing methods and instruments already in common use in the United States. It is not clear how the petitioner’s knowledge of American financial methods sets him apart from others in his profession in the United States.

██████████, Managing Director of Market Risk Management at RBS Greenwich Capital (the petitioner’s current employer), stated that the petitioner’s “extensive exposure to China’s financial markets and close relationship with China’s financial regulators, together with his knowledge and practice on U.S. Fixed Income markets, put him in a unique position to market U.S. financial securities to Chinese investors and build better connections between U.S. and China’s financial industries.” The argument here appears to be that, because the beneficiary is familiar with China’s market and regulatory structure, he has an advantage when dealing with Chinese investors and officials. Special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Matter of New York State Dept. of Transportation* at 221.

Furthermore, the petitioner submitted no independent documentary evidence to show that, for want of “better connections,” Chinese investment in the United States is at so low a level that the United States economy suffers for it. Certainly RBS Greenwich Capital and its clients stand to gain from the petitioner’s work, but such benefit does not rise to a level that merits a national interest waiver.

The director denied the petition on October 17, 2006, stating that the witnesses’ “letters speak of the beneficiary’s accomplishments in glowing, but general terms,” and that the petitioner had failed to submit evidence to support counsel’s claims regarding the significance of the petitioner’s work.

On appeal, counsel repeats the argument that citation of published work is not an appropriate criterion by which to judge the impact of the petitioner’s work. The director devoted part of one paragraph to citations, but that discussion was not the crux of the three-page decision. The director more broadly cited the lack of “contemporaneous, corroborative documentary evidence to support [counsel’s] statements.” The petitioner, on appeal, does not remedy this deficiency. The petitioner submits two new letters on appeal (to be discussed below), which amount to testimonial evidence rather than documentary evidence.

Counsel asserts that the petitioner had previously submitted documentary evidence, such as copies of award certificates. Counsel again quotes Secretary Snow’s remarks regarding “the milestone agreement between CFETS and [the] Chicago Mercantile Exchange.” The petitioner has not objectively established the significance of his awards. Furthermore, the petitioner received his awards while a government employee in China; the petitioner has not explained how they pertain to the kind of work he now does for a private brokerage firm.

The Treasury Secretary’s prepared remarks related to the agreement between the two named entities; there is no evidence that Secretary Snow was even aware of the petitioner’s role in the project, let alone that he singled it out for comment or attention. Secretary Snow’s prepared remarks, reproduced in the record, praises “China’s effort to reform and strengthen its financial system” while acknowledging that much remains to be

done in that area. The Secretary did not indicate that the way to accomplish this goal was to ensure that United States financial firms hire financial professionals from China's banks and regulatory agencies. The only witness of record from the Chicago Mercantile Exchange did not indicate that the petitioner was solely or largely responsible for the memorandum of understanding with CFETS.

The record shows that the petitioner has been involved in large-scale projects, and that his work on those projects has garnered praise from his employers and collaborators. The available evidence, however, is not sufficient to justify a finding that the petitioner's work to date has been so integral and so unique as to set him apart from his peers, and thereby qualify him for the waiver (which is a special benefit above and beyond the underlying visa classification sought). Whatever promotion of international trade the petitioner's current work entails, such work appears to fall within the normal course of his duties as a financial analyst at RBS Greenwich Capital.

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.