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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **AUG 28 2007**  
EAC 06 042 52046

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

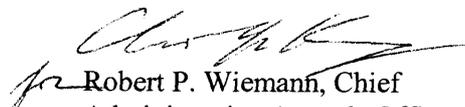
PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the employment-based immigrant visa petition, which 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 a member of the professions holding an advanced degree. According to Part 6 of the Form I-140 petition, the petitioner seeks employment as a risk assessment manager, project expert. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment 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.

On appeal, the petitioner asserts that, after the date of filing, she secured a new job with Eastman Chemical. She submits a new letter of recommendation from that company and the job offer. The petitioner also submits a new reference letter from Jennifer Klein and an e-mail notification dated after the petition was filed confirming that the petitioner passed the PRM Exam II on an unspecified date and information about the PRM program, a series of evaluation exams and self-study materials designed for the development of professional risk managers. For the reasons discussed below, we concur with the director that the petitioner has not demonstrated that it is in the national interest to waive the alien employment certification in this matter.

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 petitioner holds a Master of Public Administration degree from the Georgian Institute of Public Administration awarded in 1995, a Master of Arts in Economics from the Central European University awarded in 1998 and a Master of Business Administration from the University of Michigan awarded in 2004. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree.

On appeal, the petitioner notes that she has not merely one, but three advanced degrees. In addition, the petitioner has submitted evidence of professional memberships and ten years of work experience. Education indicative of a degree of expertise above that ordinarily encountered in the field, ten years of experience in the occupation being pursued and professional memberships are criteria for classification as an alien of exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(A),(B),(E). The issue of exceptional ability, however, is moot because, as stated above, the petitioner qualifies as a member of the professions holding an advanced degree. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215, 216 (Comm. 1998)[hereinafter "NYSDOT"]. Because exceptional ability, by itself, does not justify a waiver of the alien employment certification requirement, arguments hinging on the criteria for that classification, while relevant, are not dispositive to the matter at hand. *Id.* at 222.

The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment 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 the phrase, "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).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states, in pertinent part:

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.

*NYSDOT*, 22 I&N Dec. 215, 217-18, 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. *Id.* at 219. 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. *Id.*

We concur with the director that the petitioner works in an area of intrinsic merit, accounting and risk management. We withdraw, however, the director's finding that the petitioner has established that the proposed benefits of her work would be national in scope. *NYSDOT* provides examples of employment where the benefits would not be national in scope:

For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. Similarly, while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act. As another example, while nutrition has obvious intrinsic value, the work of one cook in one restaurant could not be considered sufficiently in the national interest for purposes of this provision of the Act.

*NYSDOT*, 22 I&N Dec. at 217 n.3. While the petitioner seeks to waive the job offer requirement, she must still establish the type of employment she intends to pursue and explain how the benefits of that proposed employment will be national in scope. On the petition, the petitioner indicated that the proposed employment was as a risk assessment manager and project expert. In this position, the petitioner would assess the business and financial risks of different standard or venture business projects and provide restructuring and management assistance for troubled or newly established companies. The petitioner did not provide a separate cover letter explaining how these services would extend beyond her employer such that they might have a national impact. In a request for additional evidence, the director explicitly requested evidence that the petitioner's proposed employment would benefit the nation as a whole. In response, the petitioner noted her multiple degrees and her knowledge of the Caspian Sea / Central Asia region and the United States' relationship with Iran.

On appeal, the petitioner submits evidence that she is now working for Eastman Chemical as a financial analyst. In this position she serves as the Annual Business Plan Coordinator and Monthly Results Analyst. She will also manage special projects assigned by the Chief Financial Officer (CFO). The petitioner must demonstrate her eligibility as of the date of filing. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Even if we were to consider this new evidence as evidence of the petitioner's intended employment as of the date of filing, the new evidence does not explain how serving as a financial analyst for Eastman Chemical

will provide benefits that are national in scope. Rather, it would appear that the services of a financial analyst for a single company would be so attenuated at the national level as to be negligible. The petitioner has not proposed the type of services that might impact the field of risk management as a whole, such as, but not limited to, authorship of published articles on risk management, creation and presentation of risk management tools for distribution at the national level or providing risk management consulting services at the national level.

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. 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. *NYS DOT*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." *Id.* at 221. Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.*

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 she 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. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner worked as a business consultant for the Center for Enterprise Restructuring and Management Assistance (CERMA) from October 1998 through July 2000. In November 2000, the petitioner was appointed as an accountant at the Georgian Gas International Corporation (GIC) and became a group coordinator of international relations at GIC a year later. In his second letter, [REDACTED], President of GIC, indicates that from August 1, 2002 to July 31, 2003, the petitioner was an "information consultant" for GIC. The petitioner was a student at the University of Michigan from September 2002 through July 2004. Her passport contains a student visa issued June 5, 2002 and stamps evidencing entry into the United States on August 12, 2002 and June 20, 2003. The petitioner does not list any other employment after July 2003 on her ETA 750B, signed November 16, 2005. In response to the director's request for additional evidence, however, the petitioner submitted a letter from [REDACTED], Director of Human Resources at the ASA Institute of Business and Computer Technology, asserting that ASA hired the petitioner as an instructor in their Business Administration Department on July 18, 2005.

In support of the petition, the petitioner submits several reference letters, most of which are not on company or government letterhead. [REDACTED] the petitioner's supervisor at CERMA, discusses the petitioner's accomplishments at CERMA within the context of a World Bank program

that required a firm to re-negotiate its bank loan. Specifically, the petitioner reworked the cash flow position and projections for a Georgian toolmaker experiencing cash flow problems as the business expanded. The reworked statements allowed the toolmaker to obtain more financing and expand. [REDACTED] concludes that reworking the technical statements of a tool-making firm into language accessible to the bankers “was a major challenge.”

Nikolos Oakley, the former Deputy Director of the Horizonti Foundation, a partner organization to CERMA, asserts that at CERMA the petitioner was able to provide restructuring solutions that allowed a company to overcome a financial crisis and expand to international markets. [REDACTED] an associate banker at the European Bank for Reconstruction and Development, asserts that he has been personally acquainted with the petitioner for ten years and has observed her professionally. [REDACTED] asserts that the petitioner provided a clear business expansion plan for a company involved in complex engineering that was utilized in applying for a commercial loan.

[REDACTED] praises the petitioner’s professionalism at GIC. As the group coordinator, the petitioner coordinated “the company relationship with international organizations that provided funds for [a] natural gas transit project, and played a key role in [the] corporate advisory team for the project as a financial analyst.” The petitioner integrated the Georgian experts and foreign consultants and was invited to London while serving as the local assistant to the financial advisors at Sumitomo Bank, London, “to master in [sic] financial spreadsheet modeling.” [REDACTED] concludes that the petitioner’s “key accomplishments” include “playing a key role as part of a corporate advisory team, [and] becoming proficient in new subjects and techniques of financial analysis in Energy sector projects.” The result was a “successfully prepared presentation delivered by our partner company to investment bankers in London.”

[REDACTED], a project management specialist at the U.S. Agency for International Development (USAID), discusses the petitioner’s work for GIC in a letter that is not on USAID letterhead. [REDACTED] praises the petitioner’s work ethic and communications skills. More specifically, she asserts that the petitioner attracted potential partners with her reports and presentations and conducted successful negotiations with potential investors and financial institutions on the Shah-Deniz natural gas transit project. [REDACTED], a professor at Georgian Technical University, provides similar information.

A few of the references discuss the petitioner’s purported employment for Booz Allen & Hamilton although she does not claim to have ever worked directly for this firm. [REDACTED] formerly the head of the loan department at the United Georgian Bank asserts that the petitioner’s work for Booz Allen & Hamilton involved advising the United Georgian Bank on its conversion process from the post-Soviet accounting system to the International Accounting Standards. [REDACTED] asserts that an

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<sup>1</sup> [REDACTED] provides the agency name as the Agency *of* International Development. The agency name is actually the Agency *for* International Development. See [www.usaid.gov](http://www.usaid.gov).

internal newsletter published by USAID frequently included the petitioner's achievements. The record, however, does not include any USAID newsletters featuring the petitioner or her work.

Finally, the petitioner submitted a letter from ██████████ President of the Association of CIS<sup>2</sup> Immigrants in New York, discussing her work as press secretary for the association. This work, however, involved increasing the association's visibility and advising new immigrants. She also worked as a personal assistant to ██████████ researching the privatization of Social Security and Medicare. This work does not appear to sufficiently relate to her area of proposed employment, risk management, and, thus, cannot be considered as relevant to the benefit sought.

The above letters demonstrate that the petitioner is a skilled and experienced financial analyst who is well respected by those who have supervised her and worked with her. The letters do not, however, provide specific examples of accomplishments that have impacted the field as a whole or other evidence of a history of success with some degree of influence on the field. Moreover, the letters are not supported by objective evidence indicative of an influence on the field. The only evidence that the petitioner's work is known beyond her immediate circle of colleagues is a listing of her case study on the website of the Richard Ivey School of Business. None of the references, however, explain the significance of this listing, such as how the petitioner's case study was selected. Finally, the record contains no evidence that the petitioner's skills and experience are not amenable to the alien employment certification process. Even on appeal, the petitioner's current employer, Eastman Chemical, provides no explanation as to why they cannot seek an alien employment certification on behalf of the petitioner. Thus, the petitioner has not established that she qualifies for the special additional benefit of a national interest waiver over and above being classified as a member of the professions holding an advanced degree.

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 alien employment 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 an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

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<sup>2</sup> Commonwealth of Independent States.



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**ORDER:** The appeal is dismissed.