



U.S. Citizenship
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Services

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FILE: EAC 03 183 52579 Office: VERMONT SERVICE CENTER Date: JUL 05 2005

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

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

2 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 The decision of the director will be withdrawn and the petition will be remanded for further action in accordance with this decision.

The petition indicated that the petitioner sought classification as an employment-based immigrant under section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability. The director noted that "some of [the] supporting documentation alludes to a National Interest Waiver (see INA 203(b)(2)[])," but found the evidence insufficient to establish the petitioner's eligibility under section 203(b)(1)(A) of the Act.

On appeal, counsel claims that the petition was improperly classified under section 203(b)(1)(A) of the Act "due to a clerical error" by her office that resulted in the wrong box being checked on Part Two of the Form I-140. Counsel further claims that the remainder of the petition "properly reflected that the petition was one under § 203(b)(2) for a National Interest Waiver petition." Several portions of the record indicate that the petitioner sought classification under section 203(b)(2) of the Act as an alien seeking an exemption from the job offer requirement and thus of a labor certification: page two of the petitioner's Form I-140 contains a notation that "this is a National Interest Waiver petition," counsel's cover letter accompanying the petition is subtitled "I-140 National Interest Waiver Petition for Qing Deng," and many of the supporting documents are relevant to and/or explicitly reference the petitioner's request for classification under section 203(b)(2) of the Act.

However, counsel's cover letter dated June 3, 2003 also makes repeated references to the petition as one filed under section 203(b)(1)(A) of the Act. On page one of this letter, counsel states, "The materials enclosed for your review are a testament to [the petitioner's] status as an individual of extraordinary ability under section 203(b)(1)(A)." On page seven of the letter, counsel claims the petitioner "has already demonstrated her extraordinary ability in the filed [sic] of analytical chemistry." Given counsel's equivocal references to both sections 203(b)(1)(A) and 203(b)(2) of the Act, any confusion regarding the proper classification of the petition is due to counsel's own statements and not rigid adherence to the alleged "clerical error" made on Part Two of the Form I-140.

Nevertheless, we find that the director improperly denied the petition for lack of evidence without first issuing a request for evidence (RFE) as required by 8 C.F.R. § 103.2(b)(8). Because the notation on the second page of the Form I-140 and the supporting documents clearly indicate that the petitioner sought classification under section 203(b)(2) of the Act, the director must consider the petition under that classification and any RFE must solicit clarification of the petitioner's requested classification. Accordingly, we will remand the petition for further action by the director in accordance with this decision.

ORDER: The decision of the director is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.