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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Public Copy

File: [Redacted] Office: Nebraska Service Center Date:

JUL - 9 2001

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)

IN BEHALF OF PETITIONER:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The director treated the petitioner's untimely appeal as a motion to reopen, and again denied the petition. The Associate Commissioner for Examinations dismissed a subsequent appeal. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be denied.

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 research associate at the Free Radical Research Institute/Electronic Spin Resonance (ESR) Facility at the University of Iowa, Iowa City. 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. The Administrative Appeals Office, acting on behalf of the Associate Commissioner, concurred with the director and dismissed the petitioner's appeal.

Review of Service records indicates that, subsequent to filing the instant petition, the alien's employer, the University of Iowa, filed another Form I-140 petition (with an approved labor certification) under the same classification, with receipt number LIN 00 179 53679. Service records further indicate that the second petition was approved on July 26, 2000. The alien subsequently filed a Form I-485 Application to Adjust Status, receipt number LIN 00 259 53992, on September 15, 2000. The alien has since withdrawn the adjustment application, apparently because she left the United States and then re-entered under an immigrant visa in early 2001. Because computerized Service records indicate that the alien is already a lawful permanent resident of the United States, further pursuit of the matter at hand is moot.

ORDER: The motion is denied, based on the alien's status as a lawful permanent resident.