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U.S. Department of Justice  
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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Washington, D.C. 20536



File: EAC 99 166 53752 Office: Vermont Service Center

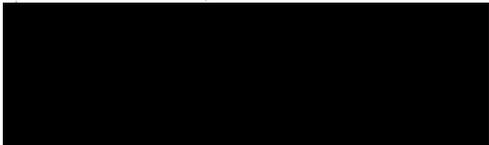
Date: **AUG 29 2002**

IN RE: Petitioner:  
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)

IN BEHALF OF PETITIONER:



**Public Copy**

INSTRUCTIONS:

This is the decision 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.

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 that 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 that 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, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

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 an executive of LearnLinc (formerly ILINC), a distance learning software company which he co-founded. 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.

The director's decision contains only one substantive paragraph regarding the petitioner's work. That paragraph reads, in its entirety:

You have applied for a waiver of the Labor Certification process as being in the national interest. Your job description appears to be intrinsic in nature [sic]. It does not appear that your job of chief operating and technical officer in your own company is national in scope. You wish to work at a company ILINC which you started. There appears to be only a secretary at the company besides yourself. Your letter states that your company did little hiring in the past two years. There has been no evidence that your company has helped the United States workers in any manner. The national interest waiver would help you and your small company more than the United States worker. Your past accomplishments have not been major in any degree.

Counsel, on appeal, correctly notes that the record amply demonstrates that the petitioner's company has between 30 and 40 employees. Counsel notes that the director has not directly addressed the bulk of the evidence in the record, and counsel therefore asserts that a new decision is in order. We concur that a new decision, giving fuller consideration to the evidence, is in order. The director's decision, as it now stands, does not even describe what kind of business the petitioner's company conducts. There is no stated basis for the peremptory finding that the petitioner's business has benefited only itself.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

**ORDER:** The director's decision 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 Associate Commissioner for Examinations for review.