

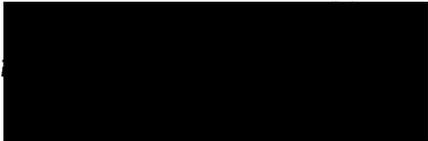


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U.S. Department of Justice
Immigration and Naturalization Service

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invasion of personal privacy**

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



File: 

Office: Nebraska Service Center

Date: DEC 03 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, Nebraska Service Center. The Associate Commissioner for Examinations rejected a subsequent appeal as improperly filed by a non-affected party. The matter is currently before us on motion. The motion will be dismissed.

The petitioner seeks classification of the beneficiary 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 of the beneficiary as a design engineer. 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.

8 C.F.R. 103.5(a)(1) *General*. Except where the Board has jurisdiction and as otherwise provided in 8 CFR parts 210, 242, and 245a, when the affected party files a motion, the official having jurisdiction may, for proper cause shown, reopen the proceedings or reconsider the prior decision.

8 C.F.R. 103.3(a)(1)(iii) states, in pertinent part:

(B) *Meaning of affected party*. For purposes of this section and sections 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

8 C.F.R. 103.5(a)(4) states that a motion that does not meet the requirements of a motion shall be dismissed.

The motion has not been filed by the petitioner, nor by any entity with legal standing in the proceeding, but rather by the beneficiary. Therefore, the motion has not been properly filed, and must be dismissed.¹

ORDER: The motion is dismissed.

¹ We note that on June 28, 2001, the beneficiary requested that the Service “cease any processing on our application and drop it.” As the beneficiary did not have standing to file the motion in the first place, however, we must still dismiss the motion as improperly filed.