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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



File: EAC-99-265-51457

Office: Vermont 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: SELF-REPRESENTED

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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.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 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.

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 requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Initially, the petitioner submitted prior counsel's brief and an exhibit list with 35 exhibits listed. Less than half of the exhibits listed are currently in the record. On June 26, 2000, the director sent a boilerplate request for additional documentation, providing the requirements set forth in Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998). The director did not advise the petitioner of the missing exhibits. The petitioner responded with additional reference letters.

While the petitioner's degrees, listed as exhibits 16 and 17, are not in the record, the director did not contest that the petitioner has an advanced degree. In determining that the petitioner had not established that a waiver of the labor certification was in the national interest, the director noted the lack of independent opinions from national experts, reviews of the petitioner's work, awards

for the petitioner's contributions, or news articles explaining the importance of the petitioner's contributions. First, we note that the record does contain letters from disinterested researchers in the petitioner's field. In addition, we note that awards and media attention are, depending on the evidence itself, evidence relating to "national acclaim," a term used by the director in his decision. The classification sought by the petitioner, however, does not require national acclaim.

In addition to the fact that the record does not contain the petitioner's degrees, we note that the list of exhibits includes exhibit 14, a special report on the petitioner's area of research in *Chemical and Engineering News*. The petitioner references this special report as evidence of her contributions to the field. Yet, the special report is not in the record. Without the report itself, we cannot determine whether it references the petitioner or her project.

We are not convinced that a proper adjudication of the petition is possible without the missing exhibits. Therefore, this matter will be remanded for the following actions. The director shall request the missing exhibits from the petitioner and consider all of the evidence under the appropriate standards set forth in Matter of New York State Dept. of Transportation, supra. 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.