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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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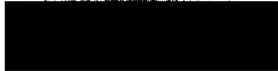
File: EAC-98-228-51634

Office: Vermont Service Center

Date:

DEC 06 2002

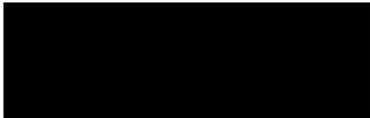
IN RE: Petitioner:
Beneficiary:



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)

PUBLIC COPY

IN BEHALF OF PETITIONER:



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. The Associate Commissioner for Examinations remanded a subsequent appeal. The matter is now before the Associate Commissioner on certification. The director's final decision will be affirmed.

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 physician. 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 because the petitioner will practice medicine in a designated health care professional shortage area. The director initially 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 petition in this case was filed on August 7, 1998. The petitioner filed an appeal on August 17, 1999, which was still pending as of November 12, 1999. On October 27, 2000, pursuant to the interim regulation at 8 C.F.R. 204.12(d)(2), the Administrative Appeals Office (AAO), on behalf of the Associate Commissioner, remanded this matter to the director for consideration under the newly enacted section 203(b)(2)(B)(ii) of the Act. The director was ordered to allow the petitioner the opportunity to submit any further evidence required by the new regulations at 8 C.F.R. 204.12(c). The AAO stated that any new decision, if adverse to the petitioner, must be certified to the AAO.

On December 12, 2000, the director issued a request for additional documentation, advising the petitioner of the requirements set forth at 8 C.F.R. 204.12(c). The petitioner did not respond. On April 26, 2001, the director denied the petition for abandonment pursuant to 8 C.F.R. 103.2(b)(13). The director certified this decision to the AAO.

The record contains no response to the director's December 12, 2000 request for additional documentation. As such, we concur with the director's final decision.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the April 26, 2001 decision of the director denying the petition will be affirmed.

ORDER: The petition is denied.