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U.S. Department of Justice
Immigration and Naturalization Service

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



File: EAC-99-267-51183 Office: Vermont Service Center

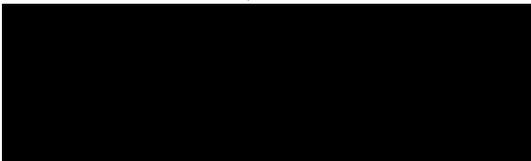
Date: 12 FEB 2002

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 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, Director
Administrative Appeals Office

DISCUSSION: The preference immigrant visa petition was denied by the Director, Vermont Service Center and is now before the Associate Commissioner for Examinations on appeal. The case will be remanded for further consideration.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(2), as an alien of exceptional ability and applied for blanket alien employment certification under Group II of Schedule A. The petition, completed electronically, reflects in blue ink on Part 2 that the petition seeks to classify the beneficiary as an alien of extraordinary ability under section 203(b)(1)(A) of the Act. The cover page to the table of contents, however, as well as the cover letter in response to the director's request for additional documentation makes very clear that the petition is based on section 203(b)(2) of the Act. The record includes duplicate copies of Form ETA 750, a form not required for a petition filed under section 203(b)(1)(A) of the Act. The director, however, found that the petitioner had not established that the beneficiary was an alien of extraordinary ability under 203(b)(1)(A).

On appeal, counsel notes that the director used the wrong legal standard in adjudicating the petition.

While someone checked Part 2 on the petition indicating that the petitioner sought to classify the beneficiary as an alien of extraordinary ability, the remainder of the record makes fairly clear that, in fact, the petitioner seeks to classify the beneficiary as an alien of exceptional ability. Thus, we concur with counsel that the director analyzed the beneficiary's eligibility under the incorrect standard.

ORDER: The petition is remanded to the director for further action in accordance with the foregoing.