

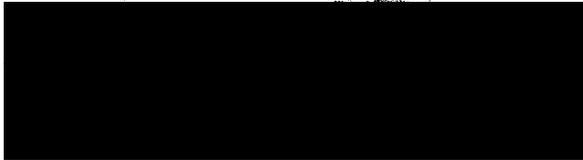


B5

U.S. Department of Justice
Immigration and Naturalization Service

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE

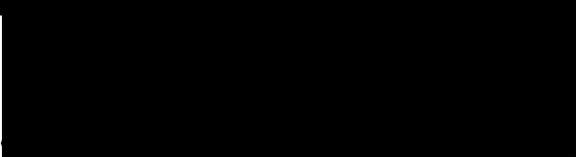
OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: [Redacted] Office: Texas Service Center

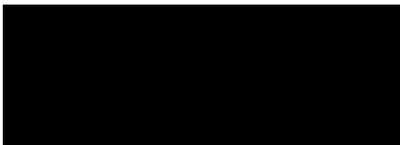
Date: JUL 12 2002

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for 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, Texas Service Center, and is now before the Associate Commissioner for Examinations on certification. The director's decision will be affirmed.

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 a member of the professions holding an advanced degree. The petitioner is a medical clinic, which seeks to employ the beneficiary as a physician practicing internal medicine. The petitioner seeks a national interest waiver of the job offer requirement under section 203(b)(2)(B)(ii) of the Act. The director denied the petition because the petitioner is not located within a designated health professional shortage area.

To date, the record contains no correspondence from the petitioner or from counsel to indicate that the petitioner has contested the director's decision.

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 . . . whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) (i) Subject to clause (ii), the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

(ii)(I) The Attorney General shall grant a national interest waiver pursuant to clause (i) on behalf of any alien physician with respect to whom a petition for preference classification has been filed under subparagraph (A) if--

(aa) the alien physician agrees to work full time as a physician in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs; and

(bb) a Federal agency or a department of public health in any State has previously determined that the alien physician's work in such an area or at such facility was in the public interest.

Service regulations at 8 C.F.R. 204.12 state, in pertinent part:

(a) Which physicians qualify? Any alien physician (namely doctors of medicine and doctors of osteopathy) for whom an immigrant visa petition has been filed pursuant to section 203(b)(2) of the Act shall be granted a national interest waiver under section 203(b)(2)(B)(ii) of the Act if the physician requests the waiver in accordance with this section and establishes that:

- (1) The physician agrees to work full-time (40 hours per week) in a clinical practice for an aggregate of 5 years (not including time served in J-1 nonimmigrant status); and
- (2) The service is;
 - (i) In a geographical area or areas designated by the Secretary of Health and Human Services (HHS) as a Medically Underserved Area, a Primary Medical Health Professional Shortage Area, or a Mental Health Professional Shortage Area, and in a medical specialty that is within the scope of the Secretary's designation for the geographical area or areas; or
 - (ii) At a health care facility under the jurisdiction of the Secretary of Veterans Affairs (VA); and
- (3) A Federal agency or the department of public health of a State, territory of the United States, or the District of Columbia, has previously determined that the physician's work in that area or facility is in the public interest.

To satisfy the requirement at 8 C.F.R. 204.12(a)(3), the petitioner has submitted a letter from [REDACTED] Program Administrator for Community Health Provider Resources with the Texas Department of Health. [REDACTED] states:

The [petitioning] practice is located in Census Tract 359.21, which is neither a Health Professional Shortage Area nor a Medically Underserved Area as designated by the Secretary of Health and Human Services. Based on the zip codes of patients seen at this clinic, several are residents of Casa De Amigos, Jacinto City, Galena Park and Shore Acres which are designated as Health Professional Shortage Areas.

Counsel states that "[t]his particular part of Harris County . . . is very densely packed with refineries and other highly dangerous industries and, for obvious safety reasons, quality medical facilities like [the petitioner] cannot be located directly within these small communities."

The director denied the petition, on the grounds that the petitioner is not located within a designated Health Professional Shortage Area. Notwithstanding counsel's argument that the petitioner is located near several such areas, we are bound by the plain language of the statute and regulations. Section 203(b)(2)(B)(ii)(I)(aa) requires that the alien physician must work "in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals." 8 C.F.R. 204.12(a)(2)(i) requires that "[t]he Service is . . . [i]n a geographical

area or areas designated by the Secretary of Health and Human Services (HHS) as a Medically Underserved Area, a Primary Medical Health Professional Shortage Area.” Similarly, 8 C.F.R. 204.12(c)(2)(i) requires the petitioner to submit “[e]vidence that the physician will provide full-time clinical medical service . . . [i]n a geographical area or areas designated by the Secretary of HHS as having a shortage of health care professionals.”

We have no discretion to find that the statute and regulations also apply to medical practices that are near, but not actually in, shortage areas. Medical practices that are not within designated geographic areas fall outside of the statutory and regulatory language, the wording of which plainly applies to the location where the beneficiary actually provides medical services, rather than to the residences of an unspecified proportion of the beneficiary’s patients. As noted above, there is no evidence in the record that the petitioner has contested this finding, which derives from the plain wording of the statute and regulations.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The petition is denied.