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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 99 229 50494 Office: Vermont Service Center

Date: JUL 18 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, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

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.

At the time the petition was filed, counsel stated "an immigrant petition . . . [seeking a] National Interest Waiver, was filed on behalf of this person and approved." Review of Service records confirms that a petition with a national interest waiver was approved on this alien's behalf on April 21, 1999, three months before the present petition's July 26, 1999 filing date.

The petitioner has thus obviously already obtained the one benefit that he can possibly gain from the present petition – that is, approval of an immigrant petition under section 203(b)(2) of the Act with a national interest waiver. The earlier petition was filed by M.F.S. Transportation Systems, the company that continues to employ him, indicating that the petitioner's employment is not an issue. Similarly, priority dates cannot be an issue, because the older petition has an earlier priority date, and priority dates for that immigrant classification are current at present. Having brought the approved petition to the Service's attention, counsel offers no explanation at all as to why the petitioner now requires a second approved petition, with a second national interest waiver.

Service records do not indicate that the first petition has been revoked or withdrawn, or that the petitioner has filed an I-485 application to adjust status despite having been the beneficiary of an approved immigrant petition for over three years. If there is a circumstance that has heretofore prevented the petitioner from applying for adjustment, nothing in the record reveals what that circumstance might be, or why it would not be an impediment in the present matter as well.

The petitioner's arguments and evidence rest on the assertion that the national interest would be served if the Service waived the job offer requirement on the petitioner's behalf. Given that the Service has already done exactly that, it is not unreasonable for us to consider the matter effectively resolved, absent a very persuasive explanation as to why it was necessary for the petitioner to pursue a second waiver only months after receiving the first one.

Because the alien has obtained the one benefit that the present petition could possibly secure for him, further pursuit of the matter at hand appears to be moot. The appeal will, therefore, be dismissed as moot.

**ORDER:** The appeal is dismissed.