

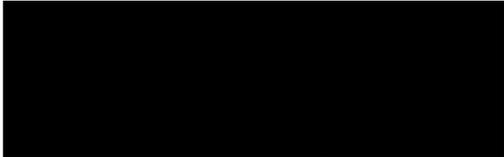


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U.S. Department of Justice  
Immigration and Naturalization Service

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invasion of personal privacy.

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



File:

Office: Nebraska Service Center

Date: JUN 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, Nebraska 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 seeks employment as a senior engineer at Abiliti Solutions, Inc. (formerly called Intertech Management Group, Inc.) in Chesterfield, Missouri. 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 has 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. -- The Attorney General may, when he 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.

Service records show that, several months after the denial of the instant petition, the petitioner's prospective employer applied for and received a labor certification on the alien's behalf. Service records further show that the employer filed a new immigrant visa petition, seeking the same classification for the alien, on May 30, 2001. This visa petition was approved on October 1, 2001. Shortly thereafter, on October 9, 2001, the alien petitioner submitted a Form I-485 application to adjust status which is currently pending at the Nebraska Service Center.

Given these developments, it is far from clear how the United States would benefit from a waiver of a requirement that has in fact already been met. A national interest waiver, approved at this late date, would not in any way accelerate or expedite the processing of an already-pending adjustment application, nor would it increase the probability of the approval of that application. An approved visa petition has no other relevant effect except to allow the alien beneficiary to apply for an immigrant visa or adjustment of status, which, in this case, has already occurred. The job



offer/labor certification requirement having been met, and the alien's adjustment process having already advanced beyond the stage where a new appellate decision would be of any discernible use to the alien, the petition at hand appears to be, for all practical purposes, moot.

This decision is without prejudice to the ongoing adjudication of the petitioner's previously filed adjustment application, that application being in no way contingent on the outcome of this appeal.

**ORDER:** The appeal is dismissed.