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U.S. Department of Justice
Immigration and Naturalization Service

Information regarding this case is available to the public.

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

[Redacted]

File: [Redacted] Office: Vermont Service Center

Date: JUN 24 2002

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:
[Redacted]

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. The petitioner appealed this decision. The Associate Commissioner for Examinations remanded the decision to the director for further review and action, finding the director's initial decision to be deficient. The Associate Commissioner instructed the director to issue a new decision, and to certify that decision to the Associate Commissioner for review. The director subsequently denied the petition again and certified it to the Associate Commissioner as instructed. Pursuant to new legislation which became law after the director certified the decision, the decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

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 pathologist at the Montefiore Medical Center, Bronx, New York. 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 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 January 20, 1998. The director certified the denial decision on October 28, 1999, and allowed the petitioner thirty days in which to respond to the certified denial. This thirty-day response period was still current on November 12, 1999. Pursuant to the interim regulation at 8 C.F.R. 204.12(d)(2), this petition shall be remanded to the director for consideration under the newly enacted section 203(b)(2)(B)(ii) of the Act.

As noted above, this section of law had not yet been enacted as of October 28, 1999, when the director denied the petition, or on January 29, 1999, when the Associate Commissioner remanded the matter for a new decision. Therefore, neither the director nor the Associate Commissioner erred by failing to take into account future legislation in their respective decisions. Nevertheless, the new law is plainly retroactive with regard to previously-filed petitions and appeals that were still active as of the date of the legislation's enactment, i.e. November 12, 1999.

In a letter dated November 24, 1999, counsel states that, pursuant to the newly enacted section 203(b)(2)(B)(ii) of the Act, the petition "will now be approved." We note, however, that the new regulations implementing this new section of law contain various evidentiary requirements that the petitioner must meet before the petition can be approved. The new section of law does not (as counsel seems to imply) mandate the approval of every underserved-area physician petition that had been denied prior to the passage of the new law. We also note that the interim regulations in question had not been issued at the time of counsel's comments (which, in turn, came only days after the passage of the legislation).

Accordingly, this matter is remanded to the director for consideration under the above statutory provision and regulations at 8 C.F.R. 204.12. The director must allow the petitioner the opportunity to submit any further evidence required by the new regulations at 8 C.F.R. 204.12(c).

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for Examinations for review.