

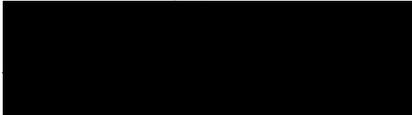


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U.S. Department of Justice  
Immigration and Naturalization Service

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



File: EAC-98-205-51974 Office: Vermont Service Center Date: 12 MAR 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:



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 employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The Associate Commissioner for Examinations remanded the matter back to the director on appeal. The matter is now before the Associate Commissioner on certification. 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 an alien of exceptional ability. 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 initially denied the petition, concluding that the petitioner qualified as an advanced degree professional but that a waiver of the labor certification was not in the national interest. The director made no finding as to whether the petitioner was an alien of exceptional ability as claimed.

On January 31, 2000, the Administrative Appeals Office (AAO), on behalf of the Associate Commissioner, remanded this matter to the director for entry of a new decision. Specifically, the AAO noted that the petitioner did not claim to have an advanced degree or to be a professional and concluded that the record did not support the director's conclusion that the petitioner was an advanced degree professional. The AAO further concluded that the director had not adequately supported his determination that the petitioner had not established that a waiver of the job offer was in the national interest.

On June 15, 2000, the director certified a new decision to this office, stating simply, "petition approved." The certification, Form I-290C includes no attachment. Operating Instruction 103.4(b) provides the following procedure for certifications:

An official certifying a case to the AAU must make an initial decision to be reviewed, as required by 8 CFR 103.4(a) (4), and prepare a formal order. The AAU will make a final decision.

The director failed to prepare a formal order explaining the reasons for his decision. As such, he failed to provide the petitioner a meaningful opportunity to address the director's reasoning should the petitioner choose to submit a brief. Therefore, this matter will be remanded for entry of a formal written order. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

**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, regardless of the outcome, is to be certified to the Associate Commissioner for Examinations for review.