



B5

U.S. Department of Justice
Immigration and Naturalization Service

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

Identification: data deleted to
prevent clearly unwarranted
invasion of persons' privacy



File: [Redacted] Office: Nebraska Service Center Date: 02 MAY 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 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 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 an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks to employ the beneficiary as a doctor's assistant. As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the job requirements on the labor certification, four years of college and a bachelor's degree, did not require an advanced degree professional.

On appeal, counsel asserts that the petitioner intended to seek classification for the beneficiary as a professional pursuant to section 203(b)(3)(ii) of the Act and inadvertently checked the box for advanced degree professional. Counsel requests that the petition be adjudicated under section 203(b)(3)(ii).

A review of the record reveals no documentation, such as a cover letter, reflecting that the petitioner was originally seeking to classify the beneficiary under section 203(b)(3)(ii). Neither counsel nor the petitioner made any attempt to "correct" the petition prior to the director's decision. There are no provisions permitting a petitioner to request a different classification on appeal. As such, we concur with the director's basis of denial.

Beyond the decision of the director, the petitioner's tax return reflects that the petitioner only showed a \$324 net income in 1997, raising the issue of whether the petitioner had the ability to pay the beneficiary as of the priority date of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the decision of the director will not be disturbed and the appeal will be dismissed.

ORDER: The appeal is dismissed.