



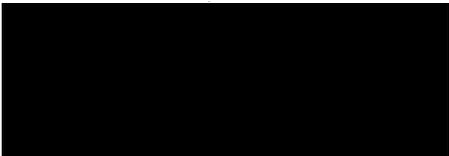
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U.S. Department of Justice

Immigration and Naturalization Service

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



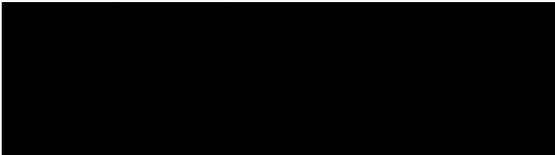
File: [redacted] (WAC-98-084-53634) Office: California Service Center

Date: OCT 01 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, California Service Center. The Associate Commissioner for Examinations dismissed a subsequent appeal. The matter is now before the Associate Commissioner on motion. The motion will be dismissed as moot.

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 a member of the professions holding an advanced degree. On June 8, 1998, the director denied the petition because the job description on the labor certification did not require the equivalent of a Master's degree because the five years of experience in addition to a bachelor's degree was not required to be "progressive." On July 8, 1998, the petitioner appealed that decision.

On August 8, 1998, the petitioner filed a new petition in behalf of the beneficiary in a lesser (third-preference) classification. This third-preference petition is based on the same labor certification and has the same priority date as the instant petition, April 14, 1997. On July 14, 1999, the Administrative Appeals Office (AAO), on behalf of the Associate Commissioner, dismissed the appeal on the instant petition. The director approved the third-preference based petition on September 9, 1999, and on October 12, 1999, the beneficiary filed a Form I-485 Application to Register Permanent Residence or Adjust Status based on the third-preference petition. That application is still pending.

On June 15, 1999, the petitioner also filed a new petition under the same classification. This subsequent second-preference visa petition has a priority date of November 21, 1997. The director approved this second-preference visa petition on July 12, 2000.

On March 20, 2000, the Service issued a policy memorandum addressing the same issues that formed the basis of the denial of the instant petition. On July 12, 2000, the petitioner filed the motion at issue based on this memorandum.

On August 17, 2000, counsel requested that the pending I-485 be adjudicated based on the approved second-preference visa petition, of which he received notice on July 17, 2000, after filing the motion at issue.

As the beneficiary of the instant petition is the beneficiary of an approved visa petition in the same classification by the same employer with a similar priority date and is seeking adjustment of status based on that petition, further pursuit of the instant matter is moot.

ORDER: The motion is dismissed, based on the approval of a petition under the same classification by the same petitioner.