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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass., 3/F
Washington, D.C. 20536

File: WAC 02 062 51321 Office: California Service Center Date:

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office ("AAO") on appeal. The appeal will be rejected.

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 or a member of the professions holding an advanced degree. The petitioner seeks employment as a technical evaluation scientist at BD PharMingen. The petitioner did not request an exemption from the requirement of a job offer or offer any evidence to establish that an exemption from the requirement of a job offer would be in the national interest of the United States.

On August 20, 2002, the director denied the petition because the petitioner failed to submit the required labor certification in accordance with 8 C.F.R. §204.5(a)(2). In his decision, the director noted that the original labor certification was lost prior to the Bureau's receipt of the petition. The director further noted that the Bureau only bears responsibility for labor certifications lost after proper filing with a petition before the Bureau. In this case, the labor certification was lost before the petitioner filed the petition. The director's decision also clearly indicated that the decision may not be appealed.

On November 18, 2002, the petitioner filed a motion to reopen and reconsider. Counsel for the petitioner claimed never to have received the approved labor certification, and asserted that the director overlooked the letter from the Department of Labor (DOL) submitted in lieu of the original labor certification. The director declined to treat the appeal as a motion to reopen or reconsider, and forwarded the appeal and the related record to the AAO for review. 8 C.F.R. § 103.3(a)(2).

Regarding the denial of an employment-based immigrant visa petition, the regulation at 8 C.F.R. § 103.1(f)(3)(iii)(B) provides for the appeal of: "[p]etitions for immigrant visa classification based on employment . . . under section 204.5 . . . of this chapter except when the denial of the petition is based upon lack of a certification by the Secretary of Labor under section 212(a)(5)(A) of the Act."

Inasmuch as there is no labor certification by the Secretary of Labor, no appeal lies from the denial of this petition. The appeal must be rejected.

ORDER: The appeal is rejected.