



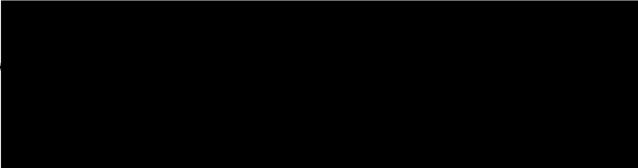
U.S. Department of Justice

Immigration and Naturalization Service

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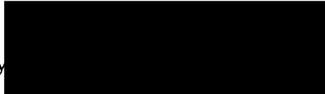
OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC 00 120 53499 Office: Vermont Service Center

Date: FEB 25 2003

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)

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be rejected as untimely filed.

The record reflects that the alien filed the I-140 petition with the Vermont Service Center on April 10, 2000, listing International Islamic University (Malaysia) as the petitioner under Part 1 of the form.

The Service regulation at 8 C.F.R. § 204.5(c) states:

Any United States employer desiring and intending to employ an alien may file a petition for classification of the alien under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act. An alien, or any person in the alien's behalf, may file a petition for classification under section 203(b)(1)(A) or 203(b)(4) of the Act (as it relates to special immigrants under section 101(a)(27)(C) of the Act).

The International Islamic University is not a United States employer. Furthermore, the petition in this case was signed by the alien himself. The Service regulation at 8 C.F.R. § 103.2(a)(2) states: "An applicant or petitioner must sign his or her application or petition." Therefore, the alien shall be considered to be the petitioner.

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 an English professor. 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 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.

8 C.F.R. § 103.3(a)(2)(i) states:

Filing appeal. The affected party shall file an appeal on Form I-290B. Except as otherwise provided in this chapter, the affected party must pay the fee required by Sec. 103.7 of this part. The affected party shall file the complete appeal including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision.

8 C.F.R. § 103.3(a)(2)(v)(B) states:

Untimely appeal.

(1) *Rejection without refund of filing fee.* An appeal which is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

(2) *Untimely appeal treated as motion.* If an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. § 103.5(a)(2) of this part or a motion to reconsider as described in 8 C.F.R. § 103.5(a)(3) of this part, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

The petition was denied on July 3, 2001. The petitioner was allowed 30 days to file an appeal, plus three additional days for mailing, pursuant to regulations at 8 C.F.R. § 103.3(a)(2) and 8 C.F.R. § 103.5a(b).

The petitioner submitted the Form I-290B, Notice of Appeal, and supporting documentation to the Service Center on July 31, 2001. However, the appeal was not accepted because it had not been properly filed. On August 20, 2001, the Service Center provided the petitioner with a notice requesting that the petitioner sign the Form I-290B, Notice of Appeal, in the appropriate place. On September 17, 2001, the petitioner submitted a properly signed Form I-290B, an accompanying brief, and additional evidence. The evidence consisted of a letter and e-mails exchanged with individuals from Louisiana State University. The correspondence indicates that the petitioner submitted a job application for a teaching position at Louisiana State University, but was refused an interview because he lacked U.S. employment authorization.

The petitioner's appeal in this case was not properly filed until September 17, 2001, more than two months subsequent to the denial of the petition. Because the appeal has not been timely filed, it must be determined whether the appeal should be treated as a motion.

The Service regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. § 103.5(a)(2), or a motion to reconsider as described in 8 C.F.R. § 103.5(a)(3), the appeal must be treated as a motion, and a decision must be made on the merits of the case.

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. According to 8 C.F.R. § 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. Review of the record indicates that the untimely appeal does not meet either of these requirements. While the petitioner's submission was accompanied by documentary evidence in the form of a letter and four e-mails, the evidence provided does not relate to the petitioner's eligibility under section 203(b)(2)(B) of the Act, the corresponding Service regulation at 8 C.F.R. § 204.5(k)(4)(ii), or the eligibility factors set forth in *Matter of New York State Dept. of Transportation*, 22 I&N Dec. 215 (Comm. 1998). Furthermore, the petitioner does not provide any new facts pertaining to his eligibility for a national interest waiver, nor does the petitioner provide a clear reason for reconsideration or any precedent decision to establish that the decision was based on an incorrect application of law or Service policy. Finally, the petitioner has not addressed any of the director's specific findings set forth in the notice of denial.

For these reasons, the appeal will not be treated as a motion to reopen or reconsider. As the appeal was untimely filed and the petitioner has failed to provide any new facts or relevant evidence that supports a motion to reopen, the appeal must be rejected.

ORDER: The appeal is rejected.