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Immigration and Naturalization Service

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

[Redacted]

File: EAC 99 041 53269 Office: Vermont Service Center

Date: FEB 27 2003

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:

[Redacted]

**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. On appeal, the Administrative Appeals Office (AAO) remanded the case to the director for further action. The director again denied the petition and the matter is now before the AAO on certification. The director's decision will be affirmed.

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 a physician. 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 because the petitioner will practice medicine in a designated health care professional shortage area. 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.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer.

(i) Subject to clause (ii), the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

(ii) Physicians working in shortage areas or veterans facilities.

The Service regulation at 8 C.F.R. § 204.12 states, in pertinent part:

How can second-preference immigrant physicians be granted a national interest waiver based on service in a medically underserved area or VA facility?

(a) Which physicians qualify? Any alien physician (namely doctors of medicine and doctors of osteopathy) for whom an immigrant visa petition has been filed pursuant to section 203(b)(2) of the Act shall be granted a national interest waiver under section 203(b)(2)(B)(ii) of the Act if the physician requests the waiver in accordance with this section and establishes

that:

- (1) The physician agrees to work full-time (40 hours per week) in a clinical practice for an aggregate of 5 years (not including time served in J-1 nonimmigrant status); and
- (2) The service is;
  - (i) In a geographical area or areas designated by the Secretary of Health and Human Services (HHS) as a Medically Underserved Area, a Primary Medical Health Professional Shortage Area, or a Mental Health Professional Shortage Area, and in a medical speciality that is within the scope of the Secretary's designation for the geographical area or areas; or
  - (ii) At a health care facility under the jurisdiction of the Secretary of Veterans Affairs (VA); and
- (3) A Federal agency or the department of public health of a State, territory of the United States, or the District of Columbia, has previously determined that the physician's work in that area or facility is in the public interest.

The petition in this case was filed on November 19, 1998. The petitioner filed her appeal on August 11, 1999, which was still pending as of November 12, 1999. The Service regulation at 8 C.F.R. § 204.12(d)(2) states:

Petitions pending on November 12, 1999. Section 203(b)(2)(B)(ii) of the Act applies to all petitions that were pending adjudication as of November 12, 1999 before a Service Center, before the Associate Commissioner for Examinations, or before a Federal court. Petitioners whose petitions were pending on November 12, 1999, will not be required to submit a new petition, but may be required to submit supplemental evidence noted in paragraph (c) of this section. The requirement that supplemental evidence be issued and dated within 6 months prior to the date on which the petition is filed is not applicable to petitions that were pending as of November 12, 1999. If the case was pending before the Associate Commissioner for Examinations or a Federal court on November 12, 1999, the petitioner should ask for a remand to the proper Service Center for consideration of this new evidence.

On October 11, 2000, the AAO issued a decision remanding the case to the director for consideration under Section 203(b)(2)(B)(ii) of the Act.

On December 26, 2000, the director issued a request for evidence citing the Service regulation at 8 C.F.R. § 204.12. The petitioner was granted sixty days in which to respond to the director's request.

The Service regulation at 8 C.F.R. § 103.2(b)(13) provides, in pertinent part:

Effect of failure to respond to a request for evidence or appearance. If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied.

The petitioner failed to submit the requested documentation. Therefore, on May 30, 2001, the director denied the petition and certified the case to the AAO for review.

The petitioner in this case has not contested the director's finding, nor submitted any further evidence pertaining to the Service regulation at 8 C.F.R. § 204.12.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the decision of the director denying the petition will be affirmed.

**ORDER:** The decision of the director dated July 13, 1999 is affirmed. The petition is denied.