



PUBLIC COPY

U.S. Department of Justice

Immigration and Naturalization Service

B5

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



Identifying data deleted to prevent identity invasion of personal privacy.

File: EAC 99 099 50310 Office: VERMONT SERVICE CENTER

Date: JAN 10 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)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

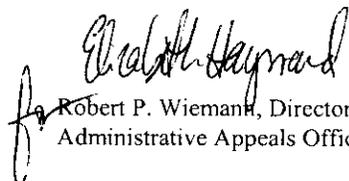
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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 CFR 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 CFR 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wieman, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The Associate Commissioner for Examinations remanded the matter to the director because of changes to the statute and regulations. The director again denied the petition and certified the decision to the Associate Commissioner for review. The 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 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 he intends to practice medicine in a medically underserved area. The petitioner had maintained that he should not have to follow the legislative requirements at section 203(b)(2)(B)(ii) of the Act, pertaining to physicians practicing in medically underserved areas. There is no indication in the statute that these new requirements are optional. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had failed to comply with statutory and regulatory requirements relating to national interest waivers for physicians in underserved areas. Although the director afforded the petitioner an opportunity to submit a written response to the certified denial, the record contains no such response.

Review of Service records indicates that, subsequent to the filing of the instant petition, a U.S. employer filed another Form I-140 petition seeking the same immigrant classification on the alien's behalf. That petition, filed on May 19, 2000, has a priority date of October 5, 1999, indicating that the petition was filed with a labor certification. Service records further indicate that the second petition was approved on September 5, 2000. The alien subsequently departed from the United States and re-entered with an immigrant visa, thereby becoming a lawful permanent resident. Because of the alien's lawful permanent resident status, further pursuit of the matter at hand is moot.

ORDER: The appeal is dismissed, based on the alien's lawful permanent resident status.