

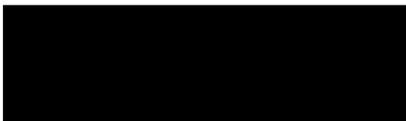


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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
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Washington, D.C. 20536



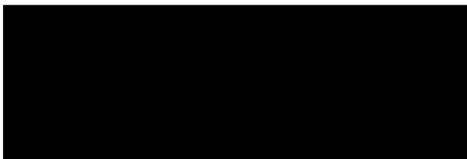
File: [Redacted] Office: VERMONT SERVICE CENTER

Date: JAN 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:



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, Vermont Service Center. The petitioner filed an appeal, and the director forwarded the appeal to the Associate Commissioner for Examinations. The appeal will be sustained.

The petitioner seeks classification as an employment-based immigrant 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 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 petitioner filed an I-140 immigrant visa petition requesting classification as a member of the professions holding an advanced degree or an alien of exceptional ability under section 203(b)(2) of the Act on August 13, 1997 with receipt number EAC 97-216-52744. On August 25, 1997, the director requested further evidence from the petitioner, requiring compliance by November 20, 1997. On September 3, 1997, the director approved the I-140 immigrant visa petition in this visa category. On October 22, 1997, the petitioner filed an Application to Register Permanent Residence or Adjust Status (I-485) with receipt number EAC 98 057 54096, based on the approved immigrant visa petition.

On September 15, 2000, the director requested further evidence from the petitioner relevant to the same immigrant visa petition (EAC 97 216 52744), and stated on the notice form that the petition had been approved "in error" on September 3, 1997. In response, the petitioner submitted additional evidence on December 8, 2000. On August 14, 2001, the director denied the petition that had already been approved, without following the procedures for revocation on notice stipulated by the regulations at 8 C.F.R. 205.2. The petitioner filed a Motion to Reopen and Reconsider the denial, and in the alternative, appeal to the AAU on December 5, 2001. On January 16, 2002, the director again issued another notice indicating that the immigrant visa petition would be approved. On February 4, 2002, however, the director denied the petitioner's motion to reopen, affirmed the August 14, 2001 denial, and rejected the petitioner's appeal as untimely. The I-485 petition was denied on February 13, 2002. On March 5, 2002, the petitioner appealed the director's February 4, 2002 decision denying the immigrant visa petition.

Without addressing all of the inexplicable procedural anomalies that occurred in this case, we find that the initial approval of the immigrant visa petition on September 3, 1997 was not properly revoked. 8 C.F.R. 205.2 states in pertinent part:

(a) *General.* Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in section 205.1 when the necessity for the revocation comes to the attention of this Service.

(b) *Notice of Intent.* Revocation of the approval of a petition or self-petition under paragraph (a) of this section will be made only on notice to the petitioner or self-petitioner. The petitioner or self-petitioner must be given the opportunity to offer

evidence in support of the petition or self-petition and in opposition to the grounds alleged for revocation of the approval.

(c) *Notification of revocation.* If, upon reconsideration, the approval previously granted is revoked, the director shall provide the petitioner or the self-petitioner with a written notification of the decision that explains the specific reasons for the revocation. The director shall notify the consular officer having jurisdiction over the visa application, if applicable, of the revocation of an approval.

The director's attempt to rescind the September 3, 1997 approval of the petition through a request for further evidence issued on September 15, 2000 did not comply with the revocation procedures at 8 C.F.R. 205.2. As such, the August 14, 2001 and the February 4, 2002 denials of the immigrant visa petition are invalid, and the September 3, 1997 approval of the immigrant visa is affirmed.

We note that an attempt under these circumstances to revoke the approval of the immigrant visa petition would be discouraged by the provisions of the April 7, 1999 HQINS memorandum entitled "Field Guidance on National Interest Waivers."

ORDER: The appeal is sustained. The director's decisions of August 14, 2001 and February 4, 2002 denying the immigrant visa petition are withdrawn. The petition is approved.