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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
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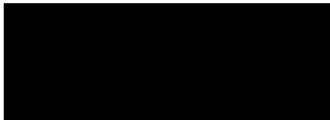


JUL 16 2003

File: WAC 02 104 51443 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)

ON 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 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 on appeal. The appeal will be dismissed.

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 in the arts. The petitioner seeks employment as an architect. The director found that the beneficiary is ineligible for blanket certification under Group II of Schedule A.

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.

The above statute requires a job offer. The regulation at 8 C.F.R. § 204.5(k)(1) states:

Any United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(2) of the Act as an alien who is a member of the professions holding an advanced degree or an alien of exceptional ability in the sciences, arts, or business. If an alien is claiming exceptional ability in the sciences, arts, or business and is seeking an exemption from the requirement of a job offer in the United States pursuant to section 203(b)(2)(B) of the Act, then the alien, or anyone in the alien's behalf, may be the petitioner.

Section 203(b)(2)(B) of the Act pertains to the "national interest waiver" of the job offer requirement. The I-140 petition form offers the petitioner a series of possible classifications, and instructs the petitioner to "check one." Among the classifications are "d. A member of the professions holding an advanced degree or an alien of exceptional ability (who is NOT seeking a National Interest Waiver)" and "i. An alien applying for a national interest waiver (who IS a member of the professions holding an advanced degree or an alien of exceptional ability)." When these two mutually exclusive options (among others) were placed before the petitioner, the petitioner checked "d.," thus specifying that he does not seek a national interest waiver.

Pursuant to 8 C.F.R. § 204.5(k)(1), quoted above, an alien may petition on his or her own behalf only if the alien seeks a national interest waiver. Otherwise, a visa petition under section 203(b)(2) of the Act must be filed by a U.S. employer that seeks to employ the alien. Certification under Schedule A, Group II, is not a national interest waiver, and that form of certification requires a job offer and thus a

U.S. employer. An alien cannot self-petition seeking certification under Schedule A, Group II. Therefore, this petition was not properly filed and it cannot be approved. The director's failure to reject this improperly filed petition does not compel its further adjudication, or otherwise nullify the regulatory requirements regarding who can and cannot file a petition in the category that the petitioner specified.

On appeal, the petitioner states that he filed the petition without legal assistance, and "was unaware of the difference between" the various employment-based immigrant classifications. The petitioner states that he intends to establish his eligibility as an alien of extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A).

While some elements of the record support the petitioner's claim that he did not fully understand the various classifications (for instance, the record lacks documentation that are required to apply for Schedule A, Group II certification), the petitioner had an opportunity to rectify this confusion before the director denied the petition. The director at one point issued a request for further evidence. In response to this request, rather than explain that he had selected the wrong classification, the petitioner attempted to strengthen his claim under the classification initially sought. This response was submitted through Immigration Clinic & Associates, rather than by the unaided petitioner on his own.

There is no provision in statute, regulation, or case law which permits a petitioner to change the classification of a petition once a decision has been rendered. Consequently, the petitioner's assertion that he was confused about the classifications cannot form a viable argument on appeal. We note that, in a supplement to that appeal, the petitioner again asserts eligibility under the originally claimed classification, and makes no further mention of the classification which he had supposedly intended to seek.

ORDER: The appeal is dismissed.