

U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
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File: WAC 99 156 53116 Office: California Service Center Date: MAY - 8 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:



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 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*

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 (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner seeks classification of the beneficiary 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 or an alien of exceptional ability. The petition was unaccompanied by certification from the Department of Labor. The director found that the beneficiary 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. The director also found that the petitioner had not established the beneficiary's eligibility for certification under Group II of Schedule A.

The petition was filed on May 6, 1999. Under Part 2 of the Form I-140, the petitioner indicated that it sought classification of the beneficiary as a member of the professions holding an advanced degree or an alien of exceptional ability. In a cover letter accompanying the initial filing, counsel stated that the beneficiary was "a member of the professions holding an advanced degree" and that he qualified for classification "under section 203(b)(2) of the Immigration and Nationality Act."

On October 17, 2000, the Service Center sent the petitioner a notice of intent to deny requesting further evidence of the beneficiary's eligibility under section 203(b)(2) of the Act.

On November 17, 2000, the Service Center received a response from counsel addressing the beneficiary's eligibility under section 203(b)(2) of the Act.

On November 15, 2001, the director properly denied the petition citing the pertinent regulatory criteria at 8 C.F.R. § 204.5(k).

On appeal, counsel for the petitioner states:

Through clerical error, the wrong petition type was indicated. Inadvertently, the box indicating a member of the professions holding an advanced degree or an alien of exceptional ability 203(b)(2) of the Act was checked. The correct box that we intended to indicate should have been an alien of extraordinary ability under 203(b)(1)(A) of the Act. Therefore, we would like to be adjudicated under that category.

A complete review of the record reveals no documentation to indicate that the petitioner ever sought to classify the beneficiary pursuant to 203(b)(1)(A) of the Act prior to the director's final determination. In addition to the box checked under Part 2 of the Form I-140, the supporting correspondence submitted by counsel (on two separate dates) clearly indicated that the petitioner sought to classify the beneficiary pursuant to section 203(b)(2) of the Act.

Counsel is now requesting that the petition be considered under a different immigrant classification. There is, however, no provision in statute, regulation, or case law that permits a

petitioner to change the classification of a petition once a decision has been rendered. Consequently, discussion in this matter may relate only to the beneficiary's eligibility pursuant to section 203(b)(2) of the Act.

Counsel indicated that she would submit a brief and/or evidence to the Administrative Appeals Office within thirty days. Counsel dated the appeal December 10, 2001. As of this date, more than two years later, the AAO has received nothing further.

The appeal has failed to address the beneficiary's eligibility under section 203(b)(2) of the Act or the regulatory criteria set forth at 8 C.F.R. § 204.5(k). As stated in 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

The petitioner has not specifically addressed the reasons stated for denial and has not provided any additional evidence. The appeal must therefore be summarily dismissed.

**ORDER:** The appeal is dismissed.