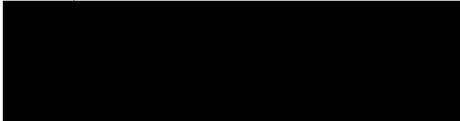


B5

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

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street, N.W.  
BCIS, AAO, 20 Mass, 3/F  
Washington, DC 20536



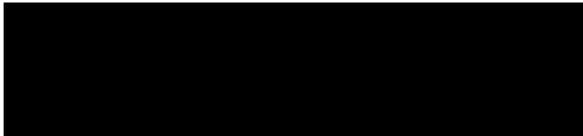
File: EAC-01-248-53201 Office: Vermont Service Center

Date: **MAY 12 2003**

IN RE: Petitioner:   
Beneficiary:

Petition: Immigrant Petition for Alien Physician Pursuant to Section 203(b)(2)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)(B)(ii)

ON 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, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont 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)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2)(B)(ii), as an alien physician. The provision relates to alien physicians who have agreed to work full time as a physician in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals. The director found that the petitioner did not work in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals.

On appeal, counsel concedes this fact but argues that the petitioner is eligible because she treats patients from such an area. Counsel notes that the petitioner's employer treats a sizable percentage of patients without insurance or who receive public assistance for medical care. The petitioner submits a list of zip codes for her patients since 1999.

Section 203(b) of the Act, as amended, provides:

(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)(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)(I) The Attorney General shall grant a national interest waiver pursuant to clause (i) on behalf of any alien physician with respect to whom a petition for preference classification has been filed under subparagraph (A) if--

(aa) the alien physician agrees to work full time as a physician *in* an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs; and

(bb) a Federal agency or a department of public health in any State has previously determined that the alien physician's work in such an area or at such facility was in the public interest.

(Emphasis added.) 8 C.F.R. § 204.12(c) provides that a petitioner seeking a waiver as a physician intending to work in an underserved area must submit the following evidence:

- (1)(i) If the physician will be an employee, a full-time employment contract for the required period of clinical medical practice, or an employment commitment letter from a VA facility. The contract or letter must have been issued and dated within 6 months prior to the date the petition is filed.
  - (ii) If the physician will establish his or her own practice, the physician's sworn statement committing to the full-time practice of clinical medicine for the required period, and describing the steps the physician has taken or intends to actually take to establish the practice.
- (2) Evidence that the physician will provide full-time clinical medical service:
  - (i) In a geographical area or areas designated by the Secretary of HHS as having a shortage of health care professionals and in a medical specialty that is within the scope of the Secretary's designation for the geographical area or areas; or
  - (ii) In a facility under the jurisdiction of the Secretary of VA.
- (3) A letter (issued and dated within 6 months prior to the date on which the petition is filed) from a Federal agency or from the department of public health (or equivalent) of a State or territory of the United States or the District of Columbia, attesting that the alien physician's work is or will be in the public interest.
  - (i) An attestation from a Federal agency must reflect the agency's knowledge of the alien's qualifications and the agency's background in making determinations on matters involving medical affairs so as to substantiate the finding that the alien's work is or will be in the public interest.
  - (ii) An attestation from the public health department of a State, territory, or the District of Columbia must reflect that the agency has jurisdiction over the place where the alien physician intends to practice clinical medicine. If the alien physician intends to practice clinical medicine in more than one underserved area, attestations from each intended area of practice must be included.

(4) Evidence that the alien physician meets the admissibility requirements established by section 212(a)(5)(B) of the Act.

(5) Evidence of the Service-issued waivers, if applicable, of the requirements of sections 212(e) of the Act, if the alien physician has been a J-1 nonimmigrant receiving medical training within the United States.

Counsel implies that 75 out of 190 patients at the petitioner's clinic live in underserved areas. The letter from the petitioner's employer, however, is not clear on this point. The employer asserts that the petitioner treated 75 patients from underserved areas out of 190 active cases. The record does not establish, however, that employing at least two full-time doctors is reasonable for 190 active case files. (We note that the law requires full-time employment.) As such, it appears that the employer may have been stating that the clinic had 190 active case files for patients from underserved areas and was not indicating the total number of active case files. Thus, the record does not establish the proportion of patients from underserved areas.

Regardless, the plain language of the statute is clear and unambiguous. The petitioner must work "in" an area designated as an underserved area. Serving a patient base that includes patients from such an area is not within the plain language of the law. In fact, the very reason doctors outside underserved areas are treating patients from such areas is that those patients do not have access to closer doctors.

As the language is clear, we are unable to consider counsel's general national interest arguments regarding serving patients who are uninsured or who receive public health care benefits. By passing the above law, Congress has clearly enunciated which physicians serve the national interest to such an extent as to warrant a waiver of the labor certification process. We are bound by that determination.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

**ORDER:** The appeal is dismissed.