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

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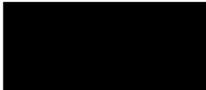
ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street, N.W.  
BCIS, AAO, 20 Mass, 3/F  
Washington, DC 20536



File: WAC-98-017-53310 Office: California Service Center

Date: SEP 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:



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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) initially summarily dismissed the appeal. The AAO reopened the matter on motion and remanded it back to the director for further review. The director denied the petition a second time. The matter is now before the AAO on certification. The matter will be remanded back to the director for further action.

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. 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.

Initially, the director denied the petition based on her conclusion that the petitioner did not qualify as an advanced degree professional and that a waiver of the labor certification was not in the national interest. On appeal, counsel argued that the petitioner's experience and education were the equivalent of an advanced degree, that, in the alternative, the petitioner qualified as an alien of exceptional ability, and that the director's request for "ratio" evidence relating to the national interest waiver request was too burdensome. Ultimately, the AAO remanded the matter back to the director to determine whether the petitioner's post-baccalaureate experience might equate to an advanced degree, whether the petitioner might qualify as an alien of exceptional ability, and a more detailed consideration of the national interest issue. The AAO ordered that any subsequent decision adverse to the petitioner be certified to the AAO.

On December 20, 2000, the director issued a detailed request for additional documentation. The notice, sent to the petitioner's current attorney, gave the petitioner until January 20, 2001 to respond. The petitioner did not respond. On March 29, 2001, the director issued a final decision concluding that the petitioner had failed to resolve the issues raised by the director in her request for additional evidence. The director certified the final decision to this office. The director's notice advising the petitioner that the decision had been certified to this office and of the petitioner's right to submit a brief to this office within 30 days was sent to prior counsel.<sup>1</sup>

Therefore, this matter will be remanded solely for the purpose of advising current counsel of the final decision certified to this office and providing an additional 30 days in which to submit a brief to this office. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The petition is remanded to the director for further action in accordance with the foregoing. Upon notifying the correct attorney, the decision is to be returned to the Administrative Appeals Office for review.

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<sup>1</sup> The record contains a 1997 G-28 from prior counsel and a 1998 G-28 from current counsel.