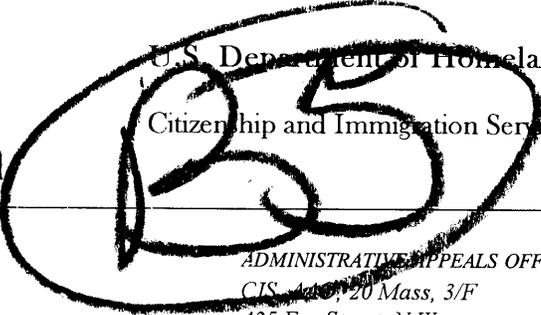


PUBLIC COPY

**Identifying data deleted to
prevent clear and unwarranted
invasion of personal privacy**

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



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



File: EAC-00-266-54164 Office: Vermont Service Center

Date:

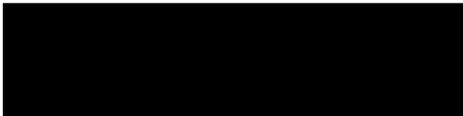
IN RE: Petitioner:
Beneficiary:



SEP 30 2003

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:



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 Citizenship and Immigration Services (CIS) 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. The Administrative Appeals Office (AAO) remanded the matter back to the director on appeal. The matter is now before the AAO on motion. The motion will be rejected. The decision of the AAO will be withdrawn on Service motion, and the petition will be approved.

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 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 director found that the petitioner 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 AAO concluded that the petitioner had overcome the director's concerns on appeal. The AAO, however, noted that the record did not include evidence that the petitioner had the advanced degree claimed prior to the date of filing, August 31, 2000. The AAO remanded the matter back to the director for the purpose of requesting the petitioner's degrees.

On motion, the petitioner now submits evidence of his Master of Science degree in Civil Engineering awarded June 2, 1996 and his Ph.D. in Environmental Engineering awarded May 21, 2000.

A remand is not a final decision that a party may request to be reopened. Accordingly, the motion is rejected. Nevertheless, the record now establishes the petitioner's eligibility for the classification sought. As such, we will reopen this matter on our own motion.

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 sustained that burden. Accordingly, the decision of the AAO remanding the matter will be withdrawn and the petition will be approved.

ORDER: The decision of January 6, 2003 is withdrawn, and the petition is approved.