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U.S. Citizenship  
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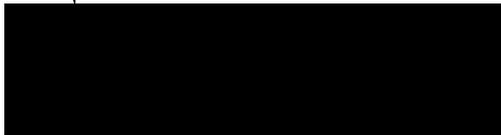


FILE: WAC 02 175 50611 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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 of the Administrative Appeals Office 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.

  
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 a member of the professions holding an advanced degree. The petitioner seeks employment as a physician. 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 because he will practice medicine in a geographic area designated as medically underserved by the Secretary of Health and Human Services (HHS). The director found that the petitioner did not submit letters (issued and dated within 6 months of the petition's filing date) from a qualifying federal agency or state department of health.

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.

(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.

Citizenship and Immigration Services regulations at 8 C.F.R. § 204.12(c) list several documentary requirements, including the following:

(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. . . .

(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.

The petition was filed on May 2, 2002. The petitioner seeks to practice medicine in Reedley, California. Therefore, pursuant to 8 C.F.R. § 204.12(c)(3), the petition cannot be approved unless the record includes letters from a Federal agency or the California Department of Health Services, dated between November 3, 2001 and the petition's filing date.

The petitioner's initial filing includes letters from officials of several hospitals, nursing homes, and other health care facilities. The petitioner has also submitted letters of support from [REDACTED] Mayor of [REDACTED] dated September 7, 2001, and United States Representative George Radanovich, dated October 11, 2001.

The director denied the petition on July 23, 2003, because the petitioner's letters are dated September and October of 2001. There is some indication in the record that the petitioner had initially attempted to file the petition in October 2001, but the director returned the petition and documentation because the petitioner had used an outdated petition form (the form was revised on August 30, 2001).

On appeal, the petitioner acknowledges the basis for denial, and states "I have replaced them with new letters." The appeal submission includes new letters from Rep. [REDACTED] dated August 18, 2003, and from Mayor [REDACTED] dated August 19, 2003. These new letters do not overcome the denial, because the regulatory language plainly requires that the letters must be dated during the six-month period *preceding* the filing of the petition.

Further review of the record reveals additional grounds that prevent the approval of the petition. The regulations at 8 C.F.R. § 204.12(c)(3) specify that the letter must come from a "Federal agency" or the "department of public health (or equivalent) of a State." Rep. [REDACTED] is not a Federal agency, and Mayor [REDACTED] does not represent the California Department of Health Services. Also, the petitioner has not established that Rep. [REDACTED] knowledge of the alien's qualifications or his background in making determinations on matters involving medical affairs.

In response to a request for further evidence, the petitioner had submitted a letter, dated May 9, 2003, from Dr. [REDACTED] Interim Health Officer for Fresno County, California. This letter is dated over a year after the petition's filing date, and Dr. [REDACTED] represents a county office rather than the California Department of Health Services.

The petitioner's letters were, therefore, not only untimely, but they were also from unacceptable sources. The petitioner's submission of new letters cannot overcome this finding. If the petitioner desires to submit newly-executed letters, they must be submitted in the context of a new petition, filed not more than six months after the date of the letters.

Furthermore, the petitioner has submitted no first-hand documentary evidence to establish that his practice is located in an area designated by the Secretary of HHS as medically underserved in the petitioner's specialty. Such evidence could derive from HHS itself, for example, or from the Federal Register, which regularly publishes lists of underserved areas organized geographically and by specialty. The simple assertion by the petitioner, or by a third-party witness who is not affiliated with HHS, that the petitioner will practice in a designated area is not sufficient.

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 accompanied by all required supporting evidence and fee.

**ORDER:** The appeal is dismissed.