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**U.S. Citizenship  
and Immigration  
Services**

**B5**



**FEB 04 2004**

FILE: EAC 98 179 50807 Office: VERMONT 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:

SELF-REPRESENTED

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.

*Mari Johnson*  
for 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 a subsequent appeal for consideration under the newly enacted 203(b)(2)(B)(ii) of the Immigration and Nationality Act. The director again denied the petition and certified the case to the AAO for review. The petitioner filed an appeal of that decision, however, no appeal is necessary and therefore the appeal will be rejected.<sup>1</sup> The matter is now before the AAO on certification. The director's decision will be affirmed.

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 the petitioner will practice medicine in a designated health care professional shortage area. The director initially 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.

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) Waiver of job offer.

(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

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<sup>1</sup> The substance of the appeal will be considered as the petitioner's response to the certified decision. It is noted that the appeal to the AAO was filed using an incorrect form. Rather than using Form I-290B, Notice of Appeal to the Administrative Appeals Unit, the petitioner filed his appeal using Form EOIR-29, Notice of Appeal to the Board of Immigration Appeals.

(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.

8 C.F.R. § 204.12 (d)(2) provides:

*Petitions pending on November 12, 1999.* Section 203(b)(2)(B)(ii) of the Act applies to all petitions that were pending adjudication as of November 12, 1999 before a Service Center, before the Associate Commissioner for Examinations, or before a Federal court. Petitioners whose petitions were pending on November 12, 1999, will not be required to submit a new petition, but may be required to submit supplemental evidence noted in paragraph (c) of this section. The requirement that supplemental evidence be issued and dated within 6 months prior to the date on which the petition is filed is not applicable to petitions that were pending as of November 12, 1999. If the case was pending before the Associate Commissioner for Examinations or a Federal court on November 12, 1999, the petitioner should ask for a remand to the proper Service Center for consideration of this new evidence.

The petition in this case was filed on June 4, 1998 and initially denied on June 22, 1999. The petitioner filed an appeal on July 23, 1999, which was still pending as of November 12, 1999. On April 29, 2002, pursuant to the interim regulation at 8 C.F.R. § 204.12(d)(2), the AAO remanded the matter to the director for consideration under the newly enacted section 203(b)(2)(B)(ii) of the Act. The director was ordered to allow the petitioner the opportunity to submit any further evidence required by the new regulations at 8 C.F.R. § 204.12(c). The AAO stated that any new decision, if adverse to the petitioner, must be certified to the AAO.

On October 10, 2002, the director issued a request for evidence pertaining to the regulatory requirements set forth at 8 C.F.R. § 204.12(c). The petitioner was requested to submit “[a] letter from a Federal agency or from a department of public health (or equivalent) of a state attesting that [his] work as a physician is or will be in the national interest.”

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:

(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.

The petitioner responded by submitting a letter from the Gallia County Health Department stating that the petitioner's work “will be in the public's best interest.” The director denied the petition, stating that the letter

from the Gallia County Health Department did not “satisfy the requirement at 8 C.F.R. § 204.12(c)(3) for a letter from a Federal agency or a state department of public health.” The director certified the decision to the AAO.

In response to the director’s notice of certification, the petitioner requests oral argument. Oral argument, however, is limited to cases where cause is shown. The petitioner must show that a case involves unique facts or issues of law that cannot be adequately addressed in writing. In this case, the petitioner has shown no cause for oral argument; the petitioner simply expresses a desire to make his case in person. Consequently, the petitioner’s request for oral argument is denied.

We concur with the director’s finding. Rather than providing a letter from a State department of public health or a Federal agency, the petitioner has instead submitted a letter from a county health department.

The supplemental information in the Interim Rule at 65 Fed. Reg. 53889, 53890 (September 6, 2000) explains the importance of obtaining references from a central authority:

[T]he interim rule establishes that the needed attestation must come from a State department of public health (or the equivalent), including the United States territories and the District of Columbia. While the Act, as amended, states that “a department of public health any State” may provide the needed attestation, the Service has concerns over how a completely decentralized system of providing attestations can effectively address the problem of physician shortages. In particular, the Service sees problems with an attestation procedure operating without a central authority in each State having oversight of the process and oversight of where the physicians are actually practicing. Therefore, the interim rule places the authority with each State department of public health to make the necessary attestations. Nothing in this interim rule prevents local departments of public health from urging the central State health department to issue attestations concerning the merits of a particular alien physician and that particular physician’s desire to practice medicine in a HHS-designated underserved area. This policy of placing the authority to render a needed attestation with the State public health department is consistent with the Service regulations that address waivers of the 2-year return home requirement for J-1 nonimmigrant physicians.

The Service is also restricting attestations to physicians intending to practice clinical medicine within the agency’s territorial jurisdiction. For example, the Service will not accept an attestation from the State of Maryland Public Health Department regarding a physician proposing to practice medicine exclusively in Pennsylvania.

For the above stated reasons, we find that the petitioner has failed to satisfy the regulatory requirements at 8 C.F.R. § 204.12(c)(3).

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

**ORDER:** The appeal is rejected. The director’s decision is affirmed and the petition remains denied.