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



FILE: WAC 01 283 50636 Office: CALIFORNIA SERVICE CENTER Date: **JAN 21 2004**

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:
[Redacted]

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.

for *Mari Johnson*
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 (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner seeks to classify the beneficiary 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 seeks to employ the beneficiary as an Assistant Executive Pastry Chef. 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 had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel states: "Labor certification would be impossible as the requirement for the position requires more than the minimum/average skills of a pastry chef. Labor certification are [sic] designed to test the U.S. labor market on basic skills."

The inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner must still demonstrate that the beneficiary will serve the national interest to a substantially greater degree than do others in his same field. Congress plainly intended that aliens of exceptional ability should be subject to the job offer/labor certification requirement. With regard to Congressional intent, a statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d 1289, 1295 (5th Cir. 1987). The national interest waiver is not merely an option to be exercised at the discretion of the alien or his employer. Rather, it is a special, added benefit that necessarily carries with it the additional burden of demonstrating that the alien's admission will serve the national interest of the United States.

Counsel did not specifically challenge the director's findings, nor was additional evidence presented. Rather, counsel indicated that she would submit a brief and/or evidence to the AAO within sixty days. Counsel dated the appeal October 31, 2002. As of this date, more than fourteen months later, the AAO has received nothing further.

As stated in 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

The petitioner has not specifically addressed the reasons stated for denial and has not provided any additional evidence. The appeal must therefore be summarily dismissed.

ORDER: The appeal is dismissed.