

PUBLICITY



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FILE: LIN 02 229 50602 Office: NEBRASKA SERVICE CENTER Date: MAY 06 2004

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

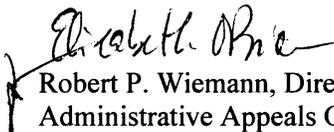
PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



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, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

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 research associate at the Ohio State University. 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 has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Citizenship and Immigration Services regulations at 8 C.F.R. § 103.3(a)(2) require the petitioner to file an appeal within 30 days after service of the decision. 8 C.F.R. § 103.2(a)(7)(i) states that filings in which the check or other financial instrument used to pay the filing fee is subsequently returned as non-payable will not retain a filing date, and that submissions with an incorrect fee shall be rejected.

The director denied the petition on June 30, 2003, and received the petitioner's appeal on July 28, 2003. The check containing the fee remittance was not properly filled out, and therefore the director returned the appeal package to counsel. Pursuant to the above regulations at 8 C.F.R. § 103.2(a)(7)(i), the appeal was not properly filed. Counsel resubmitted the appeal package, with a properly executed check, and the director received the documentation on August 25, 2003. The appeal was not properly filed during the time permitted by regulation.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

As the appeal was untimely filed, the appeal must be rejected.

**ORDER:** The appeal is rejected.