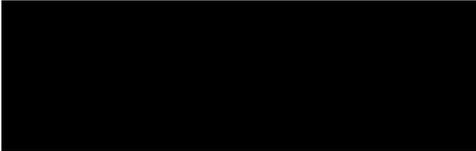




U.S. Citizenship
and Immigration
Services

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FILE: WAC 02 286 51737 Office: CALIFORNIA SERVICE CENTER Date: **MAY 06 2004**

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

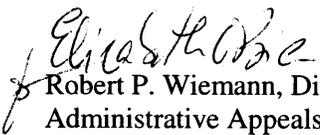
PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

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, California Service Center. The director then reopened the proceeding upon the petitioner's motion, and again denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily 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 chief scientist at Biozone Laboratories, Inc. 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.

8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part, "[a]n officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

On appeal, counsel states:

The instant case was wrongfully denied for reasons stated in the motion to reopen, attached. The motion to reopen was filed to give the California Service Center a chance to correct its obvious errors and failings. California chose instead to not even read or respond to any of the issues in the Motion to Reopen, but to reprint a copy of the original denial modifying it slightly. . . . This case will be one of several that I will be sending to the Office of Professional Responsibility in Washington along with a formal complaint. If other Service Centers follow California's lead, America will soon become a third world country.

The "slight" modification amounts to nearly a page of added discussion and findings. Counsel makes no specific observations about the added material in the director's second decision. Counsel simply offers the general complaint that the director did not give sufficient weight to the newly submitted materials on motion.

The petitioner re-submits the entire motion submission on appeal, with counsel's request that the AAO review these documents. A substantive appeal cannot rest on the simple declaration that the petitioner is dissatisfied with the director's findings, and the request that the same materials be reviewed a second time (a third time, in the case of the original record of proceeding).

With regard to counsel's allegations of incompetence and misconduct, any formal complaint filed against the California Service Center is a separate matter, outside of the AAO's jurisdiction. Counsel's suggestion that the denial of immigrant petitions is transforming the United States into "a third world country" adds nothing of substance to the proceeding at hand; the statement is an expression of personal frustration rather than a considered argument or statement of fact.

Counsel, on appeal, adds the following comments:

It should also be noted that although the NIW unit of the California Service center considers that the Petitioner is not even exceptional, that same Service center has approved a petition finding the petitioner Outstanding! Only in the California Service Center can the same petitioner be both Outstanding and not exceptional. See attached Outstanding Petition Approval.

Each petition is adjudicated on its own merits. The AAO is not in possession of the record of proceeding for the approved petition, and the approved petition sought a different immigrant classification, with different eligibility standards. The observation that the California Service Center approved a different petition on the alien's behalf would carry no weight in the petitioner's favor, even if that observation had not immediately followed strongly-worded allegations that the California Service Center is incapable of properly adjudicating immigrant petitions.

Computerized records indicate that three different petitions were filed on the petitioner's behalf on the same day, September 25, 2002. Two of the petitions were filed by the alien himself: the present petition, and a second petition, receipt number WAC 02 286 50962 (still pending as of March 31, 2004). The third petition, receipt number WAC 02 286 51640, was filed by Biozone Laboratories, Inc. It is this third petition that was approved on July 16, 2003.

The I-140 petition form includes several questions about the alien's prior immigration history. One of those questions is "Has any immigrant visa petition ever been filed by or on behalf of this person?" Another question is "Are you filing any other petitions or applications with this one?" The instructions to the form instruct the petitioner to provide written explanations if the answer to any of these questions is "Yes." When preparing the Form I-140 contained in the record, counsel answered "No" to both questions, and the petitioner signed the form under penalty of perjury. The petitioner, filing two petitions on his own behalf on the same day, with a third filed simultaneously on his behalf, clearly had reason to know that other petitions were, in fact, being filed with the petition now at issue.

Given that the petitioner is already the beneficiary of an approved visa petition, it is not clear what relief the petitioner seeks that he has not already obtained. Following the approval of Biozone's petition on his behalf, the alien filed a Form I-485 adjustment application, receipt number WAC-04-001-51256, still pending as of March 31, 2004. The approval of a second petition on his behalf would in no way expedite the processing of the adjustment application, nor would it increase the chances that the application will be approved. The fact that the petitioner has one approved petition on his behalf certainly does not demonstrate that it would serve the national interest to approve a second one, when a single petition is all that is needed for an alien to apply for an immigrant visa or adjustment of status.

The bare assertion that the director's adjudication was careless, and a general request for re-adjudication of the petition, is not sufficient basis for a substantive appeal. The approval of another petition on the alien's behalf serves only to prove that the petitioner has already gained the only benefit that the petitioner could hope to gain from the approval of this present petition. Inasmuch as counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal, the appeal must be summarily dismissed.

ORDER: The appeal is dismissed.