



U.S. Citizenship
and Immigration
Services

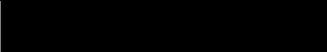
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FILE:



Office: VERMONT SERVICE CENTER

Date:

JAN 04 2008

EAC 05 182 51901

IN RE:

Petitioner:



Beneficiary:

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.

2 Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed as untimely.

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 an alien of exceptional ability. The petitioner seeks employment as an Avionics Radar Specialist with the U.S. Army. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment 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 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 asserted that the petitioner is eligible for the national interest waiver based on counsel's own interpretation of the relevant statute and regulation. The AAO concluded that while the military benefited the national interest, the benefits of a single soldier would be too attenuated at the national level. More significantly, the AAO concluded that the petition was based entirely on speculation as to the petitioner's ability to benefit the national interest in the future rather than on the petitioner's previous track record of success in his field. On motion, counsel submits a brief and evidence that the AAO's decision, dated December 18, 2006 was not mailed until December 20, 2006.

The regulation at 8 C.F.R. § 103.5(a)(i) provides, in pertinent part: "Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider." If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The regulation at 8 C.F.R. § 103.5(a)(iii)(E) provides that a motion shall be submitted "to the office maintaining the record upon which the unfavorable decision was made for forwarding to the official having jurisdiction." The AAO's decision advised that all documents had "been returned to the office that originally decided your case." In this case, that office was the Vermont Service Center.

Even if we accept the December 20, 2006 date as the date of issue, the motion was untimely filed and must be dismissed. Counsel dated the motion January 16, 2007. The motion was not properly filed *with the Vermont Service Center*, however, until Tuesday, January 23, 2007, 34 days after the AAO's decision was mailed.

ORDER: The motion is dismissed.