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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



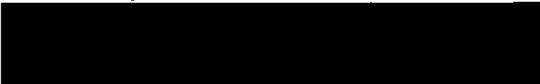
File: [Redacted]

Office: VERMONT SERVICE CENTER

Date:

12 MAR 2001

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center. The Associate Commissioner for Examinations affirmed the director's decision to deny the visa petition. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted. The previous decisions of the director and the Associate Commissioner will be withdrawn and the petition will be approved.

The petitioner seeks classification for the beneficiary pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3). The petitioner seeks to employ the beneficiary as a teacher. The Associate Commissioner found that the petitioner had not established that it had the financial ability to pay the beneficiary the proffered wage of \$20,000.00 as of the filing date of the visa petition, May 8, 1997.

On appeal, counsel argued that personal savings and school business savings could have been used to augment the beneficiary's salary. The Associate Commissioner determined that the evidence submitted in support of the argument was for 1999, and did not reflect savings for the year in which the labor certification was filed.

On motion, counsel argues that "\$18,972.42 was available to bridge the deficit of \$8992.00 in May 1997 and it increased to \$27,899.71 by December 1997." Counsel submits a statement of accounts for the school and for the owner to substantiate this claim. Therefore, the petitioner has overcome the objections of the Associate Commissioner.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has met that burden.

ORDER: The order of December 9, 1999 dismissing the appeal is withdrawn. The petition is approved.