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U.S. Department of Justice

Immigration and Naturalization Service

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



File: [Redacted] Office: Texas Service Center Date: 30 JAN 2002

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

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

IN BEHALF OF PETITIONER:



Public Copy

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, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the petition remanded for further action and consideration.

The petitioner is a cancer treatment and research facility. It seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(3)(A)(i), as a skilled worker in the position of a research scientist.

The director denied the petition stating that the beneficiary does not qualify for classification as a member of the professions holding an advanced degree. The director clearly adjudicated this petition under section 203(b)(2) of the Act.

On appeal, counsel argues that the petitioner checked the wrong box on the Form I-140 petition and the petition should be readjudicated. The cover letter accompanying the initial filing clearly indicates that the petitioner seeks to classify the petitioner "as an immigrant pursuant to § 203(b)(3)(A)(i) of the Immigration & Nationality Act." While the petitioner did erroneously check the wrong box on the petition form, it is clear from other correspondence in the record that the petitioner, through counsel, had plainly specified which classification it sought for the beneficiary, and the director erred in failing to take this plain statement into account. In this instance, the petitioner is not simply requesting a new adjudication after the fact, in order to pursue a previously unsought classification; the petitioner had, all along, stated the desired classification, although confusion resulted from the error on the petition form.

Accordingly, this matter will be remanded for the purpose of a new decision, to be based upon the merits of the petitioner's claim that the beneficiary is eligible for an immigrant visa as a skilled worker under section 203(b)(3)(A)(i) of the Act. The director will review all evidence of record prior to entering a new decision.

**ORDER:** The director's decision is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner, Examinations, for review.