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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536



File: WAC 01 127 51866 Office: California Service Center

Date: JAN 21 2004

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)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision 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.

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 that 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 Citizenship and Immigration Services (CIS) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn, and the case will be remanded for processing in accordance with Section 106(c) of the American Competitiveness in the Twenty-First Century Act of 2000 (AC21) and outstanding Headquarters policy memoranda.

The petitioner is a private individual who seeks to employ the beneficiary permanently in the United States as a home attendant. The petitioner's sister had originally filed a petition for the beneficiary. That petition was approved on September 27, 1993, pursuant to section 203(b)(3) of the Act. The beneficiary filed for adjustment of status to permanent residence on May 1, 1998, when a visa number became available. The original petitioner died on December 1, 2000. At that time, the beneficiary's application for adjustment of status had been pending for thirty-one months.

The instant petition was filed on March 11, 2001. The director denied the petition on November 22, 2002, noting that the new petitioner had not established that she was a successor in interest, and that there was no provision in law or regulations for a substitution of petitioners.

On appeal, counsel cites past CIS correspondence regarding a case which really is not on point. Counsel also cites the provisions of AC21 which does appear to be on point.

Section 204(j) of the Act, as amended by section 106(c) of AC21, states that:

A petition under subsection (a)(1)(D) for an individual whose application for adjustment of status pursuant to section 245 had been filed and remained adjudicated for 180 days or more shall remain valid with respect to a new job if the individual changes jobs or employers if the new job is in the same or a similar occupational classification as the job for which the petition was filed.

Among the petitions referred to in subsection (a)(1)(D) is a petition under section 203(b)(3).

A policy memorandum from the Executive Associate Commissioner, Office of Field Operations, dated June 19, 2001, and a memorandum from the Acting Associate Director for Operations, CIS, dated August 4, 2003, provide instructions to field offices on how to

handle AC21 cases. A petition from the new employer is not required; rather, a letter of employment from the new employer verifying that the job offer exists and containing the new job title, job description, and salary. Both memoranda are lengthy, and should be reviewed for their complete content. In addition, the complete record including the beneficiary's file, A 75 581 177, and her application for adjustment of status, should be reviewed for the applicability of the provisions of AC21.

ORDER: The petition is remanded to the director for further action in accordance with the foregoing.