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**U.S. Citizenship  
and Immigration  
Services**

*B6*

FILE: EAC 04 126 50799 Office: VERMONT SERVICE CENTER

Date: **SEP 06 2005**

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)

ON BEHALF OF PETITIONER:  
[REDACTED]

**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*

*R* Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is a pet services company. It seeks to employ the beneficiary permanently in the United States as a pet groomer. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director denied the petition, finding that the petitioner had not established that a waiver of the job offer would be in the national interest.

On appeal, counsel for the petitioner asserts that the director “misinterpreted the basis and the evidence presented and issued a denial as if the petition was an Extraordinary Petition and not the regular I-140 petition.”

In review, the director issued a decision on the petition as if the petitioner sought classification under section 203(b)(2)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2)(A). Section 203(b)(2)(A) of the Act provides for the granting of visas to “qualified immigrants who are members of the professions holding advanced degrees . . . or who because of their exceptional ability . . . will substantially benefit . . . the United States.” On the Form I-140 petition, the petitioner indicated that it was seeking classification of the beneficiary as “any other worker (requiring less than two years of training or experience).”

Section 203(b)(2) of the Act provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at last two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

We concur with the petitioner that the director misconstrued the basis for the Form I-140 petition and incorrectly analyzed the evidence.

Further, two paragraphs that purport to directly address specific information about the beneficiary indicate that the beneficiary “has been involved in a variety of research initiatives, to include children’s infectious diseases, Multiple Sclerosis, and Familial Mediterranean Fever.” The decision also indicates that the beneficiary “has been awarded a one-year combined NIH/Infectious Disease fellowship at the Children’s National Medical Center, Washington, DC.”

Review of the record does not indicate that the above statements apply to the alien in this proceeding. The record indicates that the beneficiary specializes in pet grooming. It appears that the director took this language from another decision, relating to another alien, and inadvertently inserted the language into the decision relating to this beneficiary.

Because all of the specific factual discussion in the director’s decision appears to pertain to some other unidentified alien, we must conclude that no relevant factual content remains to act as the basis for that decision. The director has not afforded the petitioner the opportunity to submit a meaningful appeal, and, judging from the statements in the decision, it is not readily apparent that the director relied on the correct set of facts when adjudicating the present petition. The director must, therefore, issue a new decision that more clearly takes relevant facts into account.

Accordingly, since the legal analysis in the director’s decision does not pertain to the classification sought and the factual discussion do not relate to the beneficiary, the decision must be withdrawn. The director must, therefore, issue a new decision that is based on relevant law and facts. Therefore, this matter will be remanded. The

director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.