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U.S. Department of Justice

Immigration and Naturalization Service

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

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



File: [Redacted] Office: Nebraska Service Center

Date: 19 MAR 2002

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

Petition: Immigrant Petition by Alien Entrepreneur Pursuant to § 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(5)

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, Nebraska Service Center. The Associate Commissioner for Examinations remanded the matter in response to a subsequent appeal. The director denied the petition again. The matter is now before the Associate Commissioner on certification. The director's decision will be affirmed.

The petitioner sought to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner, a private health club, sought to employ the beneficiary as its director of Exercise Physiology and Sports Nutrition. The petitioner asserted that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director initially found that the beneficiary qualified 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 January 31, 2000, the Administrative Appeals Office (AAO), on behalf of the Associate Commissioner, upheld the director's determination that the petitioner has not established that a waiver of the labor certification was in the national interest and remanded the matter to allow the petitioner to pursue Schedule A precertification. The AAO ordered that the director's subsequent decision, regardless of outcome, be certified to the Associate Commissioner for review.

On June 7, 2000, the petitioner withdrew the petition. On August 17, 2000, the director denied the petition based on the petitioner's withdrawal.

**ORDER:** The director's decision of August 17, 2000 is affirmed, the petition is denied.