



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: DEC 21 2000

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

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(2)

Public Copy

IN BEHALF OF PETITIONER: Self-represented

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Texas Service Center, and was certified to the Associate Commissioner for Examinations for review. The Associate Commissioner affirmed the director's decision. The petitioner filed a motion to reconsider, which the Associate Commissioner granted, and the Associate Commissioner again affirmed the denial of the petition. The matter is now before the Associate Commissioner on a second motion to reconsider. The motion will be dismissed.

The petitioner seeks classification 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 seeks employment as a trainer of mathematics teachers. The petitioner asserts 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 found, and the Associate Commissioner concurred, that the petitioner qualifies 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.

8 C.F.R. 103.5(a)(3) states, in pertinent part:

A motion for reconsideration must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy . . . [and] must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

8 C.F.R. 103.5(a)(4) states "[a] motion that does not meet applicable requirements shall be dismissed."

In the present motion, the petitioner contends that the Service has "applied much more stringent standards in evaluating [the] petition." The petitioner does not specify the standard to which the Service should have held the petition, nor where he has derived such a standard. The vague assertion that the Service should adjust its standards to permit the approval of the petition is not a specific argument pertaining to law or policy.

The petitioner also speculates that his petition has been denied "mainly because the petitioner did not have a full-time job offer from any prospective U.S. employer." Review of the initial and appellate decisions in the record does not support this interpretation. The petitioner thus argues from a false premise which cannot form a substantive basis for a motion to reconsider.

The petitioner observes that he is completing his graduate education and is seeking permanent employment. The petitioner requests that the Service "keep my files active until new materials are supplied for your analysis and consideration." There is, however, no regulation allowing a petitioner to file a skeletal motion on the expectation of eventually obtaining and submitting further qualifying evidence, which is what the petitioner has done in this instance. If a petitioner intends to submit new evidence in support of a motion, such evidence must be submitted simultaneously with the motion itself. We note that, although considerable time has elapsed since the filing of the motion, the record contains no further submission from the petitioner.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. That burden has not been met, as the petitioner has again not provided any new facts or additional evidence to overcome the previous decision of the Associate Commissioner. Accordingly, the previous decisions of the director and the Associate Commissioner will not be disturbed, and the motion will be dismissed.

ORDER: The decision of the Associate Commissioner dated December 3, 1997 is affirmed. The motion is dismissed.