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U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

File: EAC 98 162 52020 Office: VERMONT SERVICE CENTER Date: JAN 17 2003

IN RE: Petitioner: [redacted]
Beneficiary:

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)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

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 CFR 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 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 that originally decided your case along with a fee of $110 as required under 8 CFR 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Elizabeth Heyward

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The Associate Commissioner, Examinations, dismissed a subsequent appeal. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted, the previous decision of the Associate Commissioner will be affirmed and the petition will be denied.

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 an instructor at the Business Training Institute. 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 that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

The Administrative Appeals Office ("AAO"), acting on behalf of the Associate Commissioner, affirmed the director's decision and dismissed the appeal. In the dismissal notice, the AAO had stated:

> The petitioner discusses the overall importance of providing additional education and training to underqualified workers, but he does not explain why he, in particular, is in a position to make an especially significant contribution in this regard. An alien cannot establish qualification for a national interest waiver based on the importance of his or her occupation. It is the position of the Service to grant national interest waivers on a case-by-case basis, rather than to establish blanket waivers for entire fields of endeavor. . . .
>
> While the shortage of information technology workers may be a national one, it does not follow that every individual who works to alleviate the shortage has a national impact in the field. The petitioner's impact is limited to the students he trains and, in a much less direct sense, the companies which then employ his former students. We cannot conclude that, because there exists a shortage of information technology workers, every competent instructor of computer skills is to be exempt from the job offer/labor certification requirement which, by law, attaches to the visa classification sought.

On motion, the petitioner has submitted a one-page statement and a copy of his Registered Business School Provisional Teacher License. On motion, the petitioner states that he "intends to present new facts which occurred after the rendition of the original decision by the Service, while the appeal was pending." The "new facts" pertain to the petitioner's "being licensed as a business teacher in the State of New York in four fields, his membership in a national organization for business teachers, and industry certifications proving his skill and competence in the field of computers." Referring to himself in the third person, the petitioner requests "additional time of 30 days . . . within which to prepare a more comprehensive discussion of his Motion to Reopen."

The petitioner's subsequent submission consists of a two-page statement, additional copies of his provisional teacher license, a membership card from the National Business Education Association, and two "Official Certificates of Achievement," dated April 30, 1999, designating the petitioner a "Microsoft Office User Specialist" in Microsoft Word 97 and Microsoft Excel 97.

The regulation at 8 C.F.R. 103.3(a)(2)(vii) allows for limited circumstances in which a petitioner can supplement an already-submitted appeal. This regulation, however, applies only to appeals, and not to motions to reopen or reconsider. There is no analogous regulation that allows a petitioner to submit new evidence in furtherance of a previously filed motion. By filing a motion, the petitioner does not secure for himself an open-ended period in which to supplement the record with evidence that plainly did not exist at the time the motion (let alone the underlying petition) was filed.

The petition had been filed May 29, 1998, and denied on July 13, 1999. All of the documents submitted with or after the motion concern developments well after May 1998 (as the petitioner readily acknowledges). If the petitioner was not already eligible when he filed the petition, subsequent developments cannot remedy that initial ineligibility. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. *See Matter of Izumii* (misspelled "Izummi" in the print version), 22 I & N Dec. 169 (Comm. 1998), *and Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

The petitioner states that this evidence is intended to "address . . . findings in the original decision . . . dated July 13, 1999," i.e. the director's denial decision. The time to address the director's findings is on appeal from that decision. The petitioner filed an appeal in August 1999, which the AAO had already analyzed in its April 2001 dismissal notice. It is simply too late, several years after the filing of an appeal, for the petitioner to attempt to revisit the original denial of the petition. The proper purpose of a motion, following the rendering of an appellate decision, is to revisit that appellate decision rather than the original petition or the director's denial decision. Furthermore, the petitioner attempts to address the director's findings by introducing new evidence that he, apparently, obtained in response to those findings. It remains that the director's findings were correct at the time the director made them; the director cannot reasonably be faulted for failing to take future developments into account.

At no point in his initial statement on motion, or in his untimely and impermissible supplement to that motion, does the petitioner demonstrate or allege any procedural or legal errors by the AAO in its adjudication of the appeal. Rather, the motion is entirely dedicated to an attempt to remedy, several years after the fact, deficiencies noted by the director. Even then, these deficiencies were not the sole or principal grounds for denial. The director did not deny the petition because of concerns about the petitioner's professional qualifications. Therefore, new evidence on motion about the petitioner's professional qualifications cannot overturn the denial. The AAO, in its dismissal notice, explained in detail that the petitioner cannot earn a national

interest waiver simply by choosing a career in a useful occupation, when that occupation is normally subject to the statutory job offer/labor certification requirement. At no point has the petitioner addressed, let alone overcome, this basic argument.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the previous decision of the Associate Commissioner will be affirmed, and the petition will be denied.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The Associate Commissioner's decision of April 23, 2001 is affirmed. The petition is denied.