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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

identifying data deleted to prevent clearly unwarranted invasion of personal priv

[redacted]

File: [redacted] Office: VERMONT SERVICE CENTER Date: JAN 23 2003

IN RE: Petitioner:
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)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

PUBLIC COPY

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 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 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, Vermont Service Center. An appeal was filed by the beneficiary's attorney, and the appeal was forwarded to the Associate Commissioner for Examinations by the director. The appeal will be rejected.

The petitioner seeks classification as an employment based immigrant pursuant to section 203(b)(2) of the Immigration and Nationality Act, (the Act), 8 U.S.C. 1153(b)(2) as an alien of exceptional ability or a member of the professions holding an advanced degree. On January 19, 1999, the Service approved the I-140 immigrant visa petition in this visa category. On July 11, 2001, the director sent the petitioner a notice of intent to revoke the I-140 petition based on the fact that no labor certification was contained in the record, and requested the petitioner to submit a labor certification. The director subsequently revoked approval of the I-140 immigrant visa petition based on the petitioner's failure to submit a permanent labor certification.

Although the Associate Commissioner for Examinations, through the Administrative Appeals Office, can generally assert appellate jurisdiction over revocation of approvals of certain immigrant visa petitions, the factual basis of this revocation precludes appellate review.

8 C.F.R. 103.1(f)(3) states, in pertinent part:

> (iii) *Appellate Authorities.* In addition, the Associate Commissioner for Examinations exercises appellate jurisdiction over decisions on:
>
> (B) Petitions for immigrant visa classification based on employment or as a special immigrant or entrepreneur under sections 204.5 and 204.6 of this chapter except when the denial of the petition is based upon lack of a certification by the Secretary of Labor under section 212(a)(5)(A) of the Act;

Because the director's decision is based on the lack of a certification by the Department of Labor, the Administrative Appeals Office does not have jurisdiction over this appeal. In addition, the beneficiary is without standing in the proceeding, and is not entitled to file an appeal. *See* 8 C.F.R. 103.3(a)(1)(iii)(B); 8 C.F.R. 103.3(a)(2)(v). The appeal must therefore be rejected.

ORDER: The appeal is rejected.