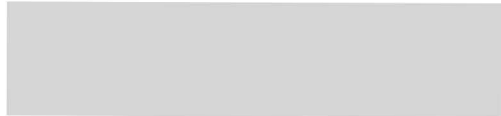




**U.S. Citizenship  
and Immigration  
Services**

(b)(6)



DATE: **JUL 31 2015**

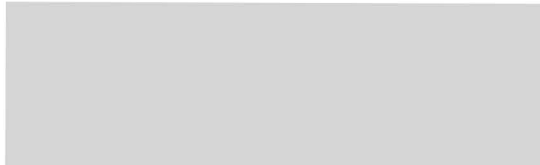
FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

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)

ON BEHALF OF PETITIONER:



**INSTRUCTIONS:**

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. We will withdraw the director's decision, and remand the matter for further consideration and entry of a new decision.

The petitioner seeks classification under 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 physician specializing in hematology and oncology. At the time of filing, the petitioner was working on the house staff at [REDACTED]. 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 petitioner filed the Immigrant Petition for Alien Worker (Form I-140) on September 3, 2013. *In re New York State Dept of Transportation*, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. The director issued a Request for Evidence (RFE) on November 4, 2013, instructing the petitioner to submit documentary evidence that meets the *NYSDOT* requirements. On January 28, 2014, the petitioner submitted his response to the director's RFE. The director denied the Form I-140 on October 27, 2014.

On appeal, the petitioner submits a letter from counsel dated November 20, 2014. The petitioner asserts that the director's decision mentions evidence that was "not actually a part of [ ] the current petition or the RFE response." The petitioner further states: "Given that fact that the Service has clearly mixed up the contents of [the petitioner's] file with some other unidentified applicant, the present application was not adjudicated correctly based on the evidence submitted."

The director's denial decision discusses documentation that was not submitted by the petitioner and which does not relate to him. For example, page 4 of the director's decision includes a paragraph about the geographic limitations of the petitioner's employment which mentions letters and e-mails that are not part of the record of proceeding. In addition, page 5 of the decision incorrectly identifies the petitioner's employer as [REDACTED] and then lists numerous documents that were not submitted by the petitioner. Furthermore, page 6 of the decision states that the petitioner "developed a new topical agent [REDACTED] for treating wounds, but the petitioner in the present matter has made no such claim. Accordingly, the decision of the director must be withdrawn, and the petition remanded to the director for the purpose of issuing a new final decision that correctly addresses the petitioner's evidence of record.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

(b)(6)



*NON-PRECEDENT DECISION*

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**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 us for review.