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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

DEC 08 2001

File: [Redacted] Office: Vermont Service Center Date:

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

Petition: Immigrant Petition for Alien Worker as an Outstanding Professor or Researcher pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(B)

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The petitioner has filed numerous motions to reopen and/or reconsider, all of which have been rejected or dismissed or otherwise resulted in the reaffirmation of the denial of the petition. The petitioner's latest motion will be dismissed.

The petitioner is a cook who seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(B). The beneficiary seeks employment in the United States as a climatologist and meteorologist. The director determined that the petitioner had not established that the beneficiary is recognized internationally as outstanding in his academic field, as required for classification as an outstanding researcher. The director also found that the petitioner has not documented a qualifying job offer, which is a necessary condition for approval of a visa petition under the classification sought. The Administrative Appeals Office has consistently found that the petitioner's numerous motions do not overcome these fundamental grounds for denial.

8 C.F.R. 103.5(a)(2) states "[a] motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

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."

On motion, the petitioner submits documentation to show that, in 1995, the beneficiary inquired into employment at the U.S. Naval Research Laboratory. The petitioner asserts that these inquiries demonstrate the beneficiary's "initiative." The petitioner repeats prior claims to the effect that the beneficiary is unable to work as a researcher in her native Poland because of alleged unfair treatment by the government there.

None of the information provided on motion has any bearing on the key grounds for denial. By law, this visa classification is open only to researchers and professors who are internationally

recognized as outstanding. The petitioner cannot overcome this basic requirement merely by claiming that unfair employment practices have deprived the beneficiary of the opportunity to earn such recognition.

Also, Service regulations at 8 C.F.R. 204.5(i)(1) state "[a]ny United States employer desiring and intending to employ a professor or researcher who is outstanding in an academic field under section 203(b)(1)(B) of the Act may file an I-140 visa petition for such classification." The regulations contain no provision for anyone other than a prospective employer to file a petition under this classification. Because the petitioner is not a university or other research institution seeking to employ the beneficiary, the petition was not properly filed, and this flaw cannot be remedied by the submission of documents to show that the beneficiary has spent several years seeking to secure a job offer.

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, I.D. 3360 (Assoc. Comm., Examinations, July 13, 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. Pursuant to the above binding case law, the petitioner cannot cause this inherently unapprovable petition to become approvable by attempting, several years after the fact, to change the conditions under which the petition was filed. The petition, as filed, is fatally and irremediably flawed and we cannot conceive of any argument or evidence that would satisfactorily establish that the petition was properly filed or that it should be approved.

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 November 8, 2000 is affirmed. The motion is dismissed.