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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



Public Copy

File:  Office: Texas Service Center Date: **OCT 18 2001**

IN RE: Petitioner: 
Beneficiary: 

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 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, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a public school system. It filed a petition seeking to classify the beneficiary as an outstanding professor or 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 petitioner seeks to employ the beneficiary permanently in the United States as a teacher. The director determined that the petitioner had not established that the beneficiary qualifies for the visa classification.

On appeal, the beneficiary states that the wrong classification was checked on the initial petition. The petitioner asserts that there is a critical shortage of qualified teachers.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(B) Outstanding Professors and Researchers. -- An alien is described in this subparagraph if --

(i) the alien is recognized internationally as outstanding in a specific academic area,

(ii) the alien has at least 3 years of experience in teaching or research in the academic area, and

(iii) the alien seeks to enter the United States --

(I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,

(II) for a comparable position with a university or institution of higher education to conduct research in the area, or

(III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

Service regulations at 8 C.F.R. 204.5(i)(3) state that a petition for an outstanding professor or researcher must be accompanied by:

(i) Evidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition. Such evidence shall consist of at least two of the following:

(A) Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field;

(B) Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members;

(C) Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation;

(D) Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field;

(E) Evidence of the alien's original scientific or scholarly research contributions to the academic field; or

(F) Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field;

(ii) Evidence that the alien has at least three years of experience in teaching and/or research in the academic field. Experience in teaching or research while working on an advanced degree will only be acceptable if the alien has acquired the degree, and if the teaching duties were such that he or she had full responsibility for the class taught or if the research conducted toward the degree has been recognized within the academic field as outstanding. Evidence of teaching and/or research experience shall be in the form of letter(s) from former or current employer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien; and

(iii) An offer of employment from a prospective United States employer. A labor certification is not required for this classification. The offer of employment shall be in the form of a letter from:

(A) A United States university or institution of higher learning offering the alien a tenured or tenure-track teaching position in the alien's academic field;

(B) A United States university or institution of higher learning offering the alien a permanent research position in the alien's academic field; or

(C) A department, division, or institute of a private employer offering the alien a permanent research position in the alien's academic field. The department, division, or institute must demonstrate that it employs at least three persons full-time in research positions, and that it has achieved documented accomplishments in an academic field.

In a letter accompanying the petition, an official of the petitioning school system states that the beneficiary "is working toward meeting requirements for the tenure track."

On June 9, 2000, the director notified the petitioner that the petition could not be approved because it was missing critical evidence. The director outlined various types of evidence as required by the above-cited regulations. The director specifically observed that the petitioner had sought to classify the beneficiary as "an outstanding professor or researcher." The petitioner responded to this notice by submitting further documentation; the petitioner made no claim that it had inadvertently checked the wrong box on the petition.

It does not appear that the petitioner qualifies to file a petition under section 203(b)(1)(B) of the Act. The regulation at 8 C.F.R. 204.5(i)(3)(iii) indicates that the employer must be a "university or institution of higher learning" or else a "department, division, or institute of a private employer offering the alien a permanent research position in the alien's academic field." Neither of these conditions apply here. Also, the petitioner has not offered to employ the beneficiary either as a professor or as a researcher. Thus, the plain wording of the statute, as well as the regulations implementing that statute, preclude the approval of this petition.

The director denied the petition, stating that the petitioner has not met the regulatory requirements. On appeal, the beneficiary states that the petitioner had intended to seek classification for the beneficiary under section 203(b)(2) of the Act, as a member of the professions holding an advanced degree. The petitioner does not contest the director's finding that the beneficiary is ineligible for classification as an outstanding professor or researcher, or that the petition is otherwise unapprovable.

There is no provision in statute, regulation, or case law which permits a petitioner to change the classification of a petition once a decision has been rendered. Consequently, discussion in this matter may relate only to section 203(b)(1)(B) of the Act, a classification for which the petitioner appears to concede ineligibility. We note also that different classifications require different initial evidence; these requirements cannot be retroactively waived owing to the petitioner's admitted error at the time of filing. A new claim of eligibility under a different classification is properly addressed in the context of a newly-filed petition.

In this matter, the petitioner does not appear to qualify to file a petition for outstanding professors or researchers, and the position offered does not qualify as a position for a professor or researcher. Therefore, the petition cannot be approved; there is no need to explore the issue of whether the beneficiary has earned international recognition as outstanding in her field.

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 appeal will be dismissed.

This denial is without prejudice to the filing of a new petition by a United States employer under section 203(b)(2) of the Act, accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.