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U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

File: [redacted] Office: Nebraska Service Center Date: 23 SEP 2002

IN RE: Petitioner:
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

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, Nebraska 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, an educational institution, filed the petition on August 3, 2000. The petitioner seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(B), as an outstanding professor or researcher. The petitioner seeks to employ the beneficiary as a journalism instructor/faculty advisor (newspaper). The director determined that the petitioner's evidence did not "establish a showing of international recognition as required by the statute and regulations." The Administrative Appeals Office, ("AAO"), acting on behalf of the Associate Commissioner, concurred with the director's finding and dismissed the petitioner's appeal on November 29, 2001. The petitioner filed a motion to reopen the AAO's decision on December 17, 2001.

The pertinent statutory and regulatory language appears in the prior AAO decision and need not be repeated here.

On motion, [redacted] briefly argues that the Service's interpretation of the term "international recognition" is unfair and "serves to work to the detriment of accomplished ethnically diverse scholars like [the beneficiary] as well as the petitioning institution..." While the Service certainly recognizes the importance of promoting diversity within our nation's educational institutions, the issue in this case is whether the beneficiary has satisfied the pertinent regulatory criteria set forth at 8 C.F.R. 204.5(i)(3). The petitioner's initial motion, however, did not specifically address the findings in the AAO's decision or provide any additional evidence in support of the motion. The petitioner's motion requested an extension until January 31, 2002 "...to compile and submit a comprehensive response that will rebut the basis of the [Service's] determination..." The motion stated that the additional time would allow the petitioner "to furnish new/additional information" in support of the beneficiary's eligibility.

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 evidence in furtherance of an already-filed motion. By filing a motion, the petitioner does not guarantee itself an open-ended period in which to supplement the record. The regulations grant the petitioner thirty days to contest the dismissal of the appeal via motion to reconsider, with no provision for extension or later submission of supplementary documentation.

On January 28, 2002, the petitioner submitted the beneficiary's novel Time is a Fire (published in 2002); a review of the novel appearing in the Indian newspaper *Telegraph* on January 4, 2002; and an article written by the beneficiary that was published in *Manushi* magazine in February

2001. This evidence, however, came into existence subsequent to the petition's filing. See 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. New circumstances that did not exist as of the filing date cannot retroactively establish eligibility as of that date. Furthermore, the regulatory criterion at 8 C.F.R. 204.5(i)(3)(i)(F) requires the beneficiary's authorship of "scholarly books or articles (in scholarly journals with international circulation)" and the petitioner's novel and article about his mother's death, while commendable, do not satisfy this requirement. In regards to the review appearing in the *Telegraph*, the regulatory criterion at 8 C.F.R. 204.5(i)(3)(i)(C) requires the submission of "published materials in professional publications written by others about the alien's work in the academic field," and the submission of a local newspaper article does not fulfill this requirement. We further note that the petitioner has provided no evidence to demonstrate the extent of the international circulation of the published materials provided.

The petitioner's motion has not addressed the findings in the AAO's November 29, 2001 decision. For example, the petitioner has not responded to the AAO's finding that the record contained conflicting information regarding whether the beneficiary had the required three years of teaching experience at the time of filing. The AAO also noted that a letter from the petitioner reflecting a permanent offer of employment to the beneficiary was absent from the record at the time of filing. All of [redacted] arguments regarding the beneficiary's international recognition relate to evidence which did not exist at the time of the petition's filing or even at the time of the director's decision. While we note that the new evidence shows that the beneficiary has continued to work in the same field, it cannot retroactively establish the petitioner's eligibility. See Matter of Katigbak, supra. On motion, the petitioner's representative has offered no meaningful discussion regarding the evidence that existed at the time of filing and how it satisfies the regulatory criteria set forth at 8 C.F.R. 204.5(i)(3). Further, the petitioner's motion has not specifically identified any erroneous conclusion of law or statement of fact contained in the AAO's dismissal.

We again find that the petition was properly denied based on the pertinent statute and regulatory criteria. The petitioner cannot overcome the grounds for denial through the submission of new evidence that did not exist at the time of the petition's filing.

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.

ORDER: The Associate Commissioner's decision of November 29, 2001 is affirmed. The petition remains denied.