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U.S. Citizenship
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Services

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FILE:



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Office: NEBRASKA SERVICE CENTER

Date: SEP 15 2005

IN RE:

Petitioner:



Beneficiary:

PETITION: Immigrant Petition for Alien Worker as 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)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks to classify himself 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).

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.

The regulation at 8 C.F.R. § 204.5(i)(1) provides:

Any 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.

(Emphasis added.)

The director denied the petition because the petition was improperly filed by the alien seeking classification as an outstanding researcher instead of by an employer.

On appeal, the petitioner asserts that the director's decision is contradictory, stating at first that the petitioner can self-petition and then stating that he cannot. The petitioner inquires as to why the petition was not rejected if he is not entitled to self-petition and why the director did not request additional evidence.

The director's decision quotes the regulation at 8 C.F.R. § 204.5(i)(1), quoted above, which provides that only U.S. employers can petition under the classification sought. The director then states: "The record reflects that contrary to the regulations, you are petitioning for yourself." We find no statement in the director's decision implying that the petitioner can self-petition for this classification.

The regulation at 8 C.F.R. § 103.2(a)(7) provides that a petition may only be rejected for lack of a petitioner's signature or required fee. In this matter, the petitioner signed the Form I-140 as the petitioner and enclosed the required fee. As such, the director could not reject the petition. Nevertheless, according to the statute and regulations quoted above, petitions under the classification sought must be filed by a U.S. employer. The instant petition was not filed by a U.S. employer. The regulation at 8 C.F.R. § 103.2(b)(8) provides that if "there is evidence of ineligibility in the record, an application or petition shall be denied on that basis notwithstanding any lack of required initial evidence." As the petitioner is ineligible to self-petition for the benefit sought, no request for additional evidence was necessary. Thus, the director properly denied the petition on that ground alone without consideration of the merits.

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.

ORDER: The appeal is dismissed.