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U.S. Citizenship
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Services

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[Redacted]

FILE: [Redacted]
LIN 04 072 53070

Office: NEBRASKA SERVICE CENTER

Date: SEP 15 2005

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

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:

[Redacted]

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. The director affirmed that decision on motion. The matter 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 motion, counsel asserted that the petition should have

filed seeking classification as an alien of extraordinary ability pursuant to section 203(b)(1)(A) of the Act. The director affirmed her initial decision. On appeal, counsel reiterates the claim that the petitioner qualifies as an alien of extraordinary ability. Counsel requests 30 days in which to submit a brief and/or evidence. Counsel dated the appeal May 27, 2005. As of this date, more than three months later, this office has received nothing further. Thus, we will adjudicate the appeal based on the assertions on the Form I-290B Notice of Appeal.

The classification checked on the Form I-140 is that of outstanding professor or researcher. Counsel's cover letter to the initial petition states:

Re: I-140 Immigrant Petition for Alien Worker
Under Sec 203(b)(1)(B) Outstanding Professor or Researcher

The letter subsequently states that the petitioner "wish[es] to submit Form I-140 petition to classify [himself] under section 203(b)(1)(B) of the Immigration and Nationality Act." Thus, we cannot conclude that the director erred in considering the petition under section 203(b)(1)(B) of the Act. Moreover, we cannot conclude that the director erred in failing to consider a separate classification on motion. Counsel has provided no legal authority for the proposition that a petitioner may request a new classification once the petition has been denied under the classification sought.

It remains, the petition was not properly filed by an employer as required. Thus, the director's decision affirming the denial of the petition was not in error.

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.