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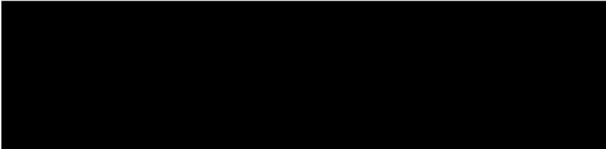


FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUN 22 2006
EAC 04 191 51019

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:



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.

Mari Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition and reaffirmed that decision on motion. The matter is now before the Administrative Appeals Office (AAO) 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). The director determined that the petitioner self-petitioned in a classification that requires a U.S. employer petitioner.

On appeal, counsel requests that the petition be approved in the classification sought or “as national interest waiver.” The petitioner submits several letters and e-mail messages from universities acknowledging receipt of the petitioner’s application for a tenure-track position.

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 regulation at 8 C.F.R. § 204.5(i)(3)(iii) provides that a petition must be accompanied by:

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.

The director denied the petition for lack of a job offer and because the petition was filed by the alien seeking classification as an outstanding researcher instead of by an employer. On motion, the petitioner submitted letters regarding his employment at George Washington University. The director concluded that the petitioner had not overcome the grounds for denial.

On appeal, counsel requests that the petition be approved “either as [an] outstanding researcher or as national interest waiver.” Regarding the national interest waiver issue, counsel asserts that the petitioner “believes and claims that his immigration to the United States is falling in the US national interest because his teaching and research in the filed [sic] of computer communication security will benefit the whole country of the United States, including defense, computer industry and hundreds of thousands computer/internet users in the United States.”

At no point has the petitioner submitted a permanent or tenure/tenure track job offer, as opposed to evidence that he has applied for a job. Moreover, the qualifying job offer must exist at the time of filing. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Regardless, a job offer cannot overcome the fact that an employer did not file the petition as required.

We acknowledge that the director stated in the initial decision that self-petitioning is permitted for aliens seeking a “National Interest Waiver (NIW).” This waiver, however, applies to a waiver of the job offer requirement (labor certification from the Department of Labor) for those classified as advanced degree professionals or aliens of exceptional ability pursuant to section 203(b)(2) of the Act. The petitioner in this matter is seeking classification as an outstanding researcher pursuant to section 203(b)(1)(B) of the Act. No national interest waiver of the job offer requirement exists for the classification sought. Neither counsel nor the petitioner provides any legal authority that would require, or even allow, Citizenship and Immigration Services to consider eligibility under more than one classification in the adjudication of a single petition. Thus, any claim for a national interest waiver of the job offer requirement under section 203(b)(2) of the Act would need to form the basis of a new petition seeking classification under that section.

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 or a self-petition in a different classification that permits self-petitions.

ORDER: The appeal is dismissed.