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FILE: LIN 05 276 52721 Office: NEBRASKA SERVICE CENTER Date: JUN 27 2006

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which 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). The director determined that the petitioner self-petitioned in a classification that requires a U.S. employer petitioner.

On appeal, counsel asserts that the director's decision is in error because it fails to take into account the petitioner's nonimmigrant status and was issued without first issuing a request for additional evidence.

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.) 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 appeal, counsel asserts that the director failed to take into account that the petitioner has nonimmigrant status. Counsel further asserts that the director should have issued a request for additional evidence “to clarify whether he had a petitioning employer.” Finally, counsel asserts that the petitioner is eligible for classification as an outstanding researcher.

Counsel is not persuasive. First, counsel does not explain how the petitioner’s nonimmigrant status is relevant. For example, counsel cites no legal authority allowing nonimmigrants to self-petition as outstanding researchers and we know of no such authority. Second, 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.” The petitioner was not eligible to self-petition in the classification sought. Counsel does not explain how the petitioner could have remedied the lack of a U.S. employer petitioner in response to a request for additional evidence. Specifically, counsel cites no legal authority, and we know of none, that allows for amending the petitioner of a petition after it has already been filed. Finally, we need not reach the issue of whether the petitioner qualifies for the classification sought as the petitioner self-petitioned in a classification that requires a U.S. employer petitioner.

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.