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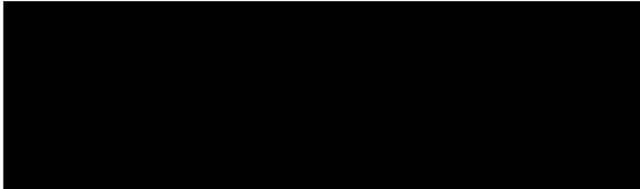
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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Services

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FILE: [REDACTED]
LIN 06 193 51067

Office: NEBRASKA SERVICE CENTER

Date: MAR 10 2008

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:

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, 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 is a law office. It seeks to classify the beneficiary as an outstanding professor or 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 petitioner seeks to employ the beneficiary permanently in the United States as a legal assistant. On the Form I-140, the petitioner indicated that it employed four individuals. The director determined that the petitioner had not established that it was a university or institution of higher education or a private employer employing at least three full-time persons in research activity positions.

On appeal, the petitioner submits a statement and additional evidence. For the reasons discussed below, the petitioner has not overcome the director's conclusion that the petitioner, a law office with four employees, does not appear to be a qualifying petitioner for the classification sought in this matter, outstanding professor or researcher pursuant to section 203(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)(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.

On appeal, the petitioner quotes *Grace Korean United Methodist Church v. Michael Chertoff*, CV 04-1849-PK (D. Ore. November 3, 2005) at length. This decision, however, relates to an alien's qualifications for a job certified by the Department of Labor and filed under section 203(b)(3) of the Act. As stated above, the petition in this matter was filed under section 203(b)(1)(B) of the Act and was denied based on the petitioner's failure to establish that it was a qualifying employer for purposes of the classification sought.

We note that the petitioner references a request for additional evidence which is not contained in the record. Moreover, CIS electronic records do not reflect that the director issued a request for additional evidence in this matter.

The petitioner's only assertion relating to the grounds of denial is that the petitioner has a relationship with the People's University of the Americas, which has more than four employees in a department devoted to legal assistance, legal research and foreign legal consultancy. While the petitioner submitted some of its brochures, they suggest that the petitioner is a professional association of lawyers rather than a private employer that engages in research as contemplated by section 203(b)(1)(B) of the Act. Significantly, as stated above, the petitioner indicated on the petition that it had only four employees total. Nothing submitted on appeal contradicts that assertion. The Act and the regulation are very clear

that it must be the petitioner or a division or department of the petition that employs at least three full-time researchers. Section 203(b)(1)(B)(iii)(III); 8 C.F.R. § 204.5(i)(3)(iii)(C).

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Beyond the decision of the director, the petitioner does not appear to be offering the petitioner a research position. The petitioner indicated that it seeks to hire the beneficiary as a legal assistant. The petition reflects that the beneficiary’s primary duties include preparing legal documents and maintaining files. While the duties include gathering and analyzing research data such as status, decisions and legal articles codes and documents, it does not appear that these duties constitute research as contemplated by section 203(b)(1)(B) of the Act. Moreover, the record also lacks evidence that the petitioner has achieved documented accomplishments as required under 8 C.F.R. § 204.5(i)(3)(iii)(C). Finally, the petitioner has never addressed the evidentiary criteria for outstanding researchers designed to demonstrate the beneficiary’s international recognition set forth at 8 C.F.R. § 204.5(i)(3)(i).

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.

We note that the petition was filed with an approved ETA Form 9089 Alien Employment Certification, which is not a requirement under the classification sought. 8 C.F.R. § 204.5(i)(3)(iii). This denial is without prejudice to the filing of a new petition under a more appropriate classification based on the approved alien employment certification with appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.