



U.S. Citizenship
and Immigration
Services

B5

[Redacted]

FILE: [Redacted]

Office: NEBRASKA SERVICE CENTER

Date:

APR 27 2004

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

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

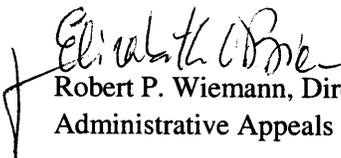
SELF-REPRESENTED

INSTRUCTIONS:

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invasion of personal privacy**

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, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The Administrative Appeals Office (AAO), dismissed a subsequent appeal. The AAO subsequently granted two motions to reopen, affirming its prior decisions and denying the petition on both occasions. The matter is now before the AAO on a third motion to reopen. The motion will be granted, the previous decision of the AAO will be affirmed and the petition will be denied.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for the underlying visa classification, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On May 9, 2000, the director denied the petition, concluding that the petitioner had not demonstrated that he had influenced the field to a substantially greater extent than other qualified researchers. The petitioner appealed this determination, submitting multiple submissions after filing the appeal. On September 5, 2001, the AAO dismissed the appeal. In its decision, the AAO acknowledged that the petitioner had received his Ph.D. subsequent to the filing date of the petition. The AAO also considered letters from the petitioner's colleagues, concluding that they did not establish the petitioner's influence on a national level. The AAO then declined to consider evidence submitted more than 30 days after the filing of the appeal. The AAO noted, however, that the additional submissions related to accomplishments after the date of filing. Citing *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971), the AAO noted that a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts.

The petitioner filed a motion to reopen this decision. In his motion, the petitioner argued that his new job with the State of Ohio demonstrated his recognition beyond his graduate school, Ohio State University (OSU). The petitioner further asserted that his doctoral thesis had attracted attention and that one of his publications had been accepted for publication. Finally, the petitioner requested that the evidence rejected as untimely on appeal be considered on motion.

The AAO, in a decision dated March 28, 2003 affirming its prior decision, questioned how the petitioner's employment with Ohio demonstrated his national recognition. The AAO noted the lack of letters from high-level Ohio officials "describing how the petitioner's scientific work has had significant impact in the field." The AAO further concluded that certificates from the State of Ohio did not demonstrate the petitioner's national influence and, as they were issued after the date of filing, could not be considered evidence of the petitioner's eligibility as of that date. Similarly, the AAO once again declined to consider the petitioner's doctoral work completed after the date of filing, but noted that all doctoral theses must add to the general pool of knowledge. The AAO continued that not every doctoral candidate qualifies for a waiver of the labor certification process. Finally, the AAO declined to consider the petitioner's articles submitted for publication after the date of filing.

In his second motion to reopen, the petitioner argued that his recent accomplishments were wrongly rejected solely based on when the documentation of those accomplishments were submitted. The petitioner notes that he was advised to file subsequent submissions with this office. The petitioner noted the ten results relating to him from a Webcrawler.com search. The petitioner further argued that under the Constitution, the State of

Ohio could not hire him for a greater interest that was contradictory to the national interest. The petitioner references two letters from the Public Utilities Commission of Ohio (PUCO) as from high-level officials of the State of Ohio. The petitioner questions how the AAO could accept his Ph.D. diploma into the record of proceedings and still not consider it as evidence of his eligibility. Finally, the petitioner noted his recent publication accomplishments.

On January 21, 2004, the AAO reaffirmed its prior decision. The AAO explained that the January 8, 2001 letter from the AAO, described by the AAO in its January 21, 2004 decision as a response to a status inquiry, advising that the petitioner's Ph.D. diploma had been entered into the record of proceedings was in compliance with 8 C.F.R. § 103.2(b)(1) and did not mandate that the evidence be considered despite being submitted in an untimely manner. The AAO quoted 8 C.F.R. § 103.2(b)(12), which requires that a petition be denied where the evidence does not establish eligibility *at the time the petition was filed*. While both prior decisions by the AAO cited *Matter of Katigbak, supra*, for the same proposition, in its decision on the second motion, the AAO referenced that decision for a third time. The AAO reaffirmed its prior rejection of articles submitted for publication after the date of filing, quoting its language to this effect from an earlier decision. Thus, the AAO also declined to consider the evidence submitted on motion relating to accomplishments after the date of filing. Finally, the AAO noted that while the petitioner had submitted letters from employees at PUCO, those letters did not explain how the petitioner had influenced the field nationally.

In his current motion, the petitioner faults the AAO for characterizing the January 8, 2001 letter from the AAO as a response to a status inquiry. The petitioner further notes that the Service Center advised the petitioner to forward documentation to the AAO. Regardless of whether the letter was in response to a status inquiry or the submission of the diploma, we affirm our conclusion that acceptance into the record of proceedings of untimely filings is required under 8 C.F.R. § 103.2(b)(1) and does not negate the untimely nature of the filing. Nor do we find that the Service Center's advice to send supplemental documentation to the office where the file was located as affirmation that the evidence would be accepted as timely. Adjudication of the sufficiency of evidence and the timely nature of submissions is made at the time of the decision, and not at the time evidence is added to the record of proceedings. Regardless, the petitioner had a Master's degree as of the date of filing. His eligibility for classification as an advanced degree professional is not at issue. Nor does the receipt of a Ph.D. degree automatically warrant a waiver of the labor certification process and the denial of the waiver has never been based on the petitioner's lack of such a degree.

The petitioner reiterates that he continues to be employed by the State of Ohio. The petitioner argues that Article IV, Section 1 of the U.S. Constitution, known as the Full Faith and Credit Clause, supports his contention that employment with the State of Ohio establishes eligibility for the waiver of the labor certification process. We cannot agree. Nothing in the U.S. Constitutions allows hiring decisions by the State of Ohio to act as final determinations in immigration proceedings relating to requests for a classification defined by the U.S. Congress. Citizenship and Immigration Services (CIS) is delegated as the sole authority to make determinations of eligibility pursuant to section 203(b)(2) of the Act. Nothing in our regulations or the precedent decision relating to this classification cited in previous decisions suggests that employment for a state government justifies a waiver of the labor certification process. Nor is the petitioner's assertion that, after the date of filing, he was offered employment by other state agencies persuasive.

The petitioner once again asserts that the record contains letters from high-ranking officials of the State of Ohio. This argument has already been addressed in our previous decision. The letters in question do not explain how the petitioner's past accomplishments as of the date of filing have influenced his field.

In addition, despite being advised on several occasions by this office that the petitioner cannot establish his eligibility as of the date of filing by documenting his accomplishments after that date, the petitioner submits more such evidence. For the reasons stated above and in our previous decisions, we cannot consider such evidence. We note that we decline to consider such evidence not simply based on when it was submitted, but based on the fact that the accomplishments documented by this evidence occurred after the date of filing.

Finally, the petitioner asserts that CIS has approved a petition filed by an alien with fewer accomplishments. Each petition is decided on a case-by-case basis. The other petition is not currently before us and is irrelevant to the petitioner's own claims of eligibility.

Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. The ultimate basis of the AAO's three prior decisions is the refusal to consider accomplishments after the date of filing pursuant to 8 C.F.R. § 103.2(b)(12) and *Matter of Katigbak*, *supra*. Thus, we note that any future motion that merely submits documentation of more accomplishments after the date of filing without providing legal citations explaining how our analysis under 8 C.F.R. § 103.2(b)(12) and *Matter of Katigbak*, *supra*, is flawed will be rejected. If the petitioner believes that his subsequent accomplishments qualify him for a waiver of the labor certification process, the appropriate procedure would be to file a new petition.

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 previous decision of the AAO will be affirmed, and the petition will be denied.

ORDER: The AAO's decision of January 21, 2004 is affirmed. The petition is denied.