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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE:  Office: TEXAS SERVICE CENTER Date: JUL 22 2010

IN RE: Petitioner: 
Beneficiary: 

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment based visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability as a research assistant professor.

Although the petitioner filed a petition for the beneficiary requesting classification as an alien of extraordinary ability under section 203(b)(1)(A) of the Act, the director denied the petition, concluding that the petitioner failed to establish that the beneficiary satisfied the standards for classification as an outstanding professor or researcher under section 203(b)(1)(B) of the Act, 8 U.S.C. § 1153(b)(1)(B). The director determined that the beneficiary would serve as a research assistant professor in the United States and therefore, applied the evidentiary criteria at 8 C.F.R. § 204.5(i)(3), rather than the evidentiary criteria applicable to aliens of extraordinary ability, at 8 C.F.R. § 204.5(h)(3).

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, the petitioner emphasizes that it did not purport to qualify the beneficiary as an outstanding professor or researcher, but as an assistant research professor of extraordinary ability. The petitioner notes that the I-140 petition was filed for an alien of extraordinary ability and that the director applied the "outstanding researcher criteria, instead of the extraordinary ability criteria" in his decision. Also, the petitioner notes that the director issued his decision during the time allotted for response to the director's May 4, 2009 request for evidence ("RFE").

Section 203(b)(1)(A) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

Upon review, the petitioner's arguments are persuasive. While the evidence submitted demonstrates that the beneficiary in this matter would serve as a research assistant professor, the I-140 petition and the supporting documents submitted by the petitioner state that the petition is for an alien of extraordinary ability. Further, the director's May 4, 2009 RFE states that the petitioner had four weeks in which to submit a response to the RFE. The director issued his decision on May 18, 2009, two weeks after issuing the RFE.

The regulations clearly prescribe different evidentiary criteria for aliens of extraordinary ability as opposed to outstanding professors or researchers. Consequently, the director's decision dated May 18, 2009 is withdrawn. The petition will be remanded for application of the correct evidentiary standards applicable to aliens of extraordinary ability at 8 C.F.R. § 204.5(h)(3).

As always, in visa petition proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.