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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date **NOV 26 2008**
SRC 07 235 52108

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting 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.

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 notes that his cover letter referenced section 203(b)(1)(A) of the Act and asserts that a job offer will be submitted within 30 days. The Form I-290B was dated August 1, 2008. As of this date, more than two and half months later, we have received nothing further.

On August 16, 2007, the petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status. In support of that application, the petitioner submitted a Form I-797C, Notice of Action verifying receipt of the Form I-140. The Form I-797C is dated August 2, 2007 and under "Notice Type" specifies that the Form I-140 was accepted as a petition for an "Outstanding Professor or Researcher, Sec. 203(b)(1)(B)." The Form I-140 was denied on July 3, 2008; therefore, for nearly one year, the petitioner and the attorney of record were aware that the petition was going to be adjudicated under section 203(b)(1)(B) of the Act, yet made no attempt to seek to amend the filing.

Even on appeal, the petitioner has submitted nothing further to establish eligibility under section 203(b)(1)(B) of the Act, even though he indicated on Form I-290B that "the Prospective Employment

offer by Post University will be submitted within 30 days.” Regardless, a job offer cannot overcome the fact that an employer did not file the petition as required.

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.