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U.S. Citizenship  
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Services

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FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: **NOV 03 2008**  
WAC 07 271 53645

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.

A handwritten signature in cursive script that reads "Mai Johnson".

→ 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, the petitioner expresses confusion as to the distinction between the petitioner and the beneficiary in this matter, noting that he is both the petitioner and the beneficiary. The petitioner also asserts that the director erred in not requesting additional evidence before denying the petition. Finally, the petitioner submits a letter from State Senator [REDACTED] and [REDACTED] Director of the Society for the Propagation of the Faith, both offering the beneficiary a position as an intern or consultant. Subsequently, the petitioner's son submits a letter advising that the petitioner will live with his children who will provide for him. We acknowledge that the petitioner and the beneficiary are one and the same. That was the entire basis of the director's denial; an alien may not self-petition in the classification sought. None of the evidence submitted on appeal overcomes the fact that the petition was improperly filed by the alien in a classification that requires the petitioner to be a U.S. employer. Moreover, a letter offering a position as an "intern" or as a consultant for a state senator or religious organization does not meet the requirements for the classification sought, which requires an offer of employment as a tenure or tenure-track professor or researcher from an institution of higher learning or a private employer with documented research achievements and at least three researchers.

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.)

The director denied the petition because the petition was filed by the alien seeking classification as an outstanding researcher instead of by an employer. We concur with the director that the classification sought requires that the petition be filed by the prospective U.S. employer, not the alien. Thus, the petition was never properly filed by a qualified petitioner. The regulation at 8 C.F.R. § 103.2(b)(8) provides that if the record evidence establishes ineligibility, the petition will be denied on that basis without the need to request any missing evidence first. Thus, the director did not err in denying the petition without first issuing a request for additional evidence.

The job offers cannot cure the fact that the petition was filed by the alien and not a prospective U.S. employer. Moreover, neither State Senator [REDACTED] nor the Society for the Propagation of the Faith is a university, an institution of higher learning or a private employer that has at least three employees engaged full-time in research with documented accomplishments in an academic field. Moreover, neither prospective employer appears to be offering the petitioner a job as a tenure or tenure track professor or a comparable position as a researcher. Thus, neither job offer meets the requirements set forth at section 203(b)(1)(B)(iii) of the Act (quoted above) and repeated at 8 C.F.R. § 204.5(i)(3)(iii).

Finally, whether or not the petitioner is related to a U.S. permanent resident or will require financial assistance is irrelevant to the classification sought. The petition filed is an employment-based petition that has very specific requirements regarding who may file the petition and the nature of the job offer. Those requirements have not been met and the lack of filing by a U.S. employer cannot be cured. A petitioner may not make material changes to a petition that has already been filed in an effort to

make an apparently deficient petition conform to Citizenship and Immigration Services (CIS) requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Commr. 1998).

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 that is either a university, institution or a private employer with at least three full-time researchers offering the petitioner a position as a tenure or tenure-track professor or researcher. Such a new petition would also have to be supported with evidence that the alien meets at least two of the regulatory criteria set forth at 8 C.F.R. § 204.5(i)(3)(i).

**ORDER:** The appeal is dismissed.