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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
and Immigration
Services

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JUN 07 2010

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date:
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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:

KHAGENDRA GHARTI-CHHETRY
363 7TH AVE., SUITE 1500
NEW YORK, NY 10001

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, Nebraska Service Center, denied the employment-based immigrant visa petition and reaffirmed that decision on motion. The matter is now before the Administrative Appeals Office (AAO) 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 motion, counsel asserts that the alien self-petitioner signed the Form I-140 due to "our law office mistake." Counsel submitted an amended Form I-140 signed by the alien self-petitioner's U.S. employer. The director concluded that the motion had not overcome the grounds of the denial.

On appeal, counsel reiterates the assertions that the alien self-petitioner "inadvertently" signed the petition and that it was "a mistake from our law office."

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.

Counsel asserts that because the classification does not require an alien employment certification, he assumed that the alien could file the petition. The regulation at 8 C.F.R. § 204.5(i)(1), however, 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 Form I-140 petition was signed by the alien as the self-petitioner. Moreover, part 1 of the petition lists the alien as the self-petitioner. Thus, the director denied the petition because the petition was filed by the alien seeking classification as an outstanding researcher instead of by a U.S. employer and reaffirmed that decision on motion. As stated above, counsel's assertion on motion and again on appeal is that U.S. Citizenship and Immigration Services (USCIS) should accept an amended petition signed by the U.S. employer because counsel's office is at fault. Counsel concludes that the director's decision is "bad in law and precedents" but cites no legal authority in support of his position.

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. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). Therefore, 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 USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r. 1998). Counsel is not persuasive that the amended petition changing the identity of the petitioner does not include a material change. A material fact is one that is "significant or essential to the issue or matter at hand." Black's Law Dictionary 611 (7th ed. 1999). In general, material means "of such a nature that knowledge of the item would affect a persona's decision-making process." *Id.* at 991. We find that the identity of the petitioner is significant and impacts the adjudication of the petition. Thus, the identity of the petitioner is a material issue that may not be amended.

In order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey*, 541 F.3d 257, 261 (4th Cir. 2008). Regardless of why the alien self-petitioner signed the petition, the petition did not meet the regulatory requirements for approval on the date it was filed because it was filed as a self-petition in a classification that requires filing by a U.S. employer. As such, the petition may not be approved.

Finally, by self-filing the original petition, the alien is the only affected party in this matter as defined at 8 C.F.R. § 103.3(a)(1)(iii)(B); thus the U.S. employer has no legal standing to amend the 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 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.