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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
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: SEP 23 2010

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:

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,

Σ Perry Rhew
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 herself 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). Specifically, the petitioner checked this classification on the I-140 petition and listed the title of this classification on both of her initial cover letters. The director determined that the petitioner self-petitioned in a classification that requires a U.S. employer petitioner.

On appeal, the petitioner asserts that she submitted her petition “as an Alien of Extraordinary Ability (EB-1A category) which can be self-petitioned.” The petitioner submits a supporting letter from her employer.

Box “a” on part 2 of the petition is the correct box for petitions filed pursuant to section 203(b)(1)(A) of the Act, which relates to aliens of extraordinary ability. The petitioner, however, checked box “b” on part 2 of the petition, which is for an outstanding professor or researcher pursuant to section 203(b)(1)(B) of the Act. The petitioner also indicated on both of her initial cover letters that she sought classification as an “outstanding researcher,” the classification described at 203(b)(1)(B) of the Act. In one of her cover letters, the petitioner asserts that she is “internationally recognized,” the standard set forth at section 203(b)(1)(B) of the Act. Thus, the director did not err in adjudicating the petition under section 203(b)(1)(B) of the Act.

Section 203(b)(1)(B) of the Act states, in pertinent part, that:

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.)

There is no provision that would allow an alien to self-petition in this classification. In light of the above, we concur with the director that the petition cannot be approved because the petition was filed by the alien seeking classification as an outstanding researcher instead of by a qualifying U.S. employer.

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.