



U.S. Department of Justice  
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: [Redacted] Office: Texas Service Center Date: AUG 14 2000

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

Petition: Immigrant Petition for Alien Worker as an 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)

**Public Copy**

IN BEHALF OF PETITIONER: Self-represented

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

*John M. O'Reilly*  
Terrence M. O'Reilly, Director  
Administrative Appeals Office

AUG 14 2000 - 0189203

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification 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 denied the petition because the regulations contain no provision to allow for an alien researcher to file a petition for this classification on his or her own behalf.

On appeal, the petitioner asserts that business conditions with his employer prevented the employer from filing the petition on his behalf. The petitioner also states that he believes he qualifies for immigration benefits under section 203(b)(2) of the Act.

The Service's regulation at 8 C.F.R. 204.5(i)(1) states that "[a]ny United States employer" may file a petition for an outstanding researcher under section 203(b)(1)(B) of the Act, provided the employer meets certain criteria. The regulations do not allow for an alien to petition on his or her own behalf for this classification, and the Service has no discretion to disregard this fundamental requirement. Thus, regardless of the petitioner's employment circumstances, this petition cannot lawfully be approved and therefore must be denied.

The petitioner states that he believes that he qualifies as an alien of exceptional ability, and that he qualifies for a waiver of the job offer requirement in the national interest, pursuant to section 203(b)(2) of the Act and subsections thereof.

There is, however, no provision in statute, regulation, or case law which permits a petitioner to change the classification of a petition once a decision has been rendered. Consequently, discussion in this matter may relate only to the beneficiary's eligibility pursuant to section 203(b)(1)(B) of the Act, pertaining to outstanding researchers. If the petitioner wishes to be considered under another classification, the proper course of action is for him or his employer to file another petition seeking that classification.

The petition in this matter cannot be approved because the petitioner is not a United States employer as required by the above regulations. Therefore, this office has no option but to dismiss the appeal, without prejudice to any properly-filed future petitions.

**ORDER:** The appeal is dismissed.