



U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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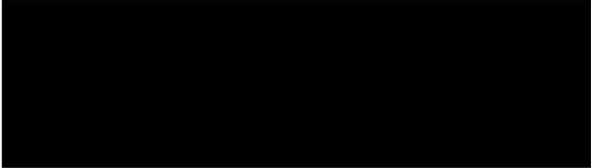
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File: [Redacted] Office: Texas Service Center Date: AUG 28 2000

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)

IN BEHALF OF PETITIONER:



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

Terrence M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The preference 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 is a public university. It seeks classification of the beneficiary 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 petitioner seeks to employ the beneficiary permanently in the United States as an assistant professor. The director determined that the petitioner had not established that the beneficiary has attained the outstanding level of achievement required for the category of outstanding professor or researcher.

The statutory and regulatory language relevant to the above-described classification appears in the director's decision, and need not be repeated here.

The initial submission consisted of minimal documentation, specifically the Form I-140 petition; the petitioner's attestation of its ability to pay the proffered wage; an approved labor certification; and copies of the beneficiary's educational and immigration documents.

The director denied the petition because the petitioner had submitted nothing to establish that the beneficiary enjoys international recognition as required by the statute and regulations. On appeal, counsel asserts that the petition "contained an obvious typographical error" regarding the visa classification sought. Counsel observes that a labor certification is not required for outstanding professors under section 203(b)(1)(B) of the Act, and the petitioner would not have gone to the inconvenience of obtaining one had it intended to seek that classification for the beneficiary. Counsel asks that the Service consider the petition under section 203(b)(2) of the Act, to classify the beneficiary as a member of the professions holding an advanced degree. Counsel adds that the director did not afford the petitioner the opportunity to remedy any deficiencies in the record.

The petitioner (or rather counsel, who prepared the petition) may well have accidentally indicated the wrong classification on the Form I-140 petition. The initial filing of the petition, however, included no cover letter or other evidence to indicate exactly which classification the petitioner sought. The petitioner and counsel each signed the Form I-140 petition, thereby assuming responsibility for its content and accuracy. The initial submission contained nothing to indicate clearly that the petitioner sought a particular classification for the beneficiary, other than the outstanding professor classification indicated on the petition form. While the inclusion of a labor certification with the petition would be anomalous for an outstanding researcher

petition, the inclusion of this document did not obligate the director to infer that the petitioner must have meant to specify a different classification.

With regard to changing the classification sought, there is 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. The denial of this petition, however, does not invalidate the underlying labor certification; a new petition, seeking the correct classification, could utilize this labor certification and retain the same priority date (i.e. the date that the Department of Labor received the application for labor certification).

Indeed, Service records show that the petitioner has indeed filed a new petition, receipt number SRC 00 077 51003. This petition (for a member of the professions holding an advanced degree) was approved on March 29, 2000, and has a priority date of December 12, 1997, which matches the receipt date on the labor certification. The beneficiary has already applied for adjustment of status.

We concur that the director should have contacted the petitioner to request additional documentation, in keeping with 8 C.F.R. 103.2(b)(8) which requires such contact when initial evidence is missing from the record. Nevertheless, in this particular instance, we cannot ignore that the petitioner has already received the very benefit that it sought with this petition, i.e. an approved immigrant visa petition with a priority date of December 12, 1997. Approval or remand of the petition at hand would not accelerate the beneficiary's already pending application for adjustment of status. Any remedial action by this office would be, therefore, superfluous.

The petitioner's initial filing mentioned only one immigrant visa classification, that of outstanding professor. The petitioner has submitted no evidence to demonstrate the beneficiary's eligibility for that classification. Therefore, regardless of counsel's later claim of error, the director acted correctly in denying the petition for the classification indicated on the petition. Counsel's request for reclassification of this petition is rendered moot by the approval of a subsequent petition using the same labor certification.

ORDER: The appeal is dismissed.