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U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

Public Copy

JUN 8 2001

File: [redacted] Office: Vermont Service Center Date:

IN RE: Petitioner:
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: 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

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The Associate Commissioner, Examinations, dismissed a subsequent appeal. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted, the previous decision of the Associate Commissioner will be affirmed and the petition will be denied.

The initial appellate decision was issued on August 18, 1998. The motion was filed on January 5, 1999, and therefore the motion was not timely filed in accordance with 8 C.F.R. 103.5(a)(1)(i). The record, however, contains a dated cover page which indicates that the appellate decision was reissued on January 22, 1999. At this date it is not clear why the appellate decision was issued twice in this matter (once after the motion had been filed), but because of this reissuance, with its advisory of the petitioner's right to file a motion, we will consider the motion on its merits.

The petitioner is a medical service and medical research corporation. It seeks to classify 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 a medical researcher. The director determined that the petitioner had not established that it employed at least three full-time researchers, or that it had achieved documented accomplishments in an academic field. In dismissing the appeal, the Administrative Appeals Office ("AAO") concurred with the director, and added that the petitioner has not established that the beneficiary has earned international recognition.

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.

Service regulations at 8 C.F.R. 204.5(i)(3) state that a petition for an outstanding professor or researcher must be accompanied by:

(i) Evidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition. Such evidence shall consist of at least two of the following:

(A) Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field;

(B) Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members;

(C) Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation;

(D) Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field;

(E) Evidence of the alien's original scientific or scholarly research contributions to the academic field; or

(F) Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field;

(ii) Evidence that the alien has at least three years of experience in teaching and/or research in the academic field. Experience in teaching or research while working on an advanced degree will only be acceptable if the alien has acquired the degree, and if the teaching duties were such that he or she had full responsibility for the class taught or if the research conducted toward the degree has been recognized within the academic field as outstanding. Evidence of teaching and/or

research experience shall be in the form of letter(s) from former or current employer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien; and

(iii) An offer of employment from a prospective United States employer. A labor certification is not required for this classification. The offer of employment shall be in the form of a letter from:

(A) A United States university or institution of higher learning offering the alien a tenured or tenure-track teaching position in the alien's academic field;

(B) A United States university or institution of higher learning offering the alien a permanent research position in the alien's academic field; or

(C) A department, division, or institute of a private employer offering the alien a permanent research position in the alien's academic field. The department, division, or institute must demonstrate that it employs at least three persons full-time in research positions, and that it has achieved documented accomplishments in an academic field.

In its prior appellate decision, the AAO stated:

The director concluded that the petitioning employer did not employ at least three full-time researchers. The petitioner has asserted that it does in fact employ three full-time researchers, specifically the beneficiary; [redacted] (described as being on leave of absence); and [redacted] Anderson, the President of the petitioning entity.

The record shows that [redacted] in addition to his duties as President of the petitioning employer, is the Director of Pediatric Cardiothoracic Surgery at SUNY HSC.[1] Given the demands on [redacted] time resulting from his administrative and surgical duties, it is not at all clear that he can be considered to be a full-time researcher. It is also noted that the inclusion of the beneficiary in the list of three researchers appears to indicate that the petitioner did not employ three researchers prior to its employment of the beneficiary.

On motion, [redacted] asserts that "[i]n August 1998 two additional medical research personnel joined this organization." The petition, however, had been filed in October 1997, and the

[1]State University of New York Health Sciences Center.

petitioner's subsequent hiring of additional researchers cannot retroactively fulfill this requirement. 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 Service requirements. I.D. 3360 (Assoc. Comm., Examinations, July 13, 1998), and 14 I & N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

Dr. Anderson acknowledges, on motion, that he is "part time employed . . . and cannot work full time in medical research." Therefore, his name should not have been included among the petitioner's full-time researchers.

Regarding the requirement for documented achievements in a research field, the AAO had stated:

> The petitioner has responded on appeal with documentation from conferences where, the petitioner asserts, its work has been presented from 1995 onward.
>
> The documentation provided by the petitioner concerns the achievements of the Department of Surgery at SUNY HSC at Brooklyn. SUNY HSC, however, is not the petitioner. The statute clearly requires that the "department, division, or institute . . . has achieved documented accomplishments in an academic field." . . . The petitioner must document (rather than merely claim or assert) specific achievements of the petitioning unit, rather than those of an affiliated organization.

On motion, states "[w]e plan to be affiliated with SUNY HSC at Brooklyn in the near future but . . . for the present we will remain private." This assertion underscores the Service's prior finding that the research accomplishments of SUNY HSC cannot rightly be attributed to the separate petitioning entity.

Dr. Anderson asserts "[w]e have a track record of employing only the best physicians to assist in our research activities," but the petitioner's hiring practices are not documented research accomplishments. also states:

> The reason [the petitioning entity] exists is to provide the necessary collaboration and personnel for collaboration between the department of Surgery, the department of Anatomy and Cell Biology, the Animal Care department, and the department of Cardiothoracic Surgery.

From this description, it appears that the petitioning entity does not engage in research at all, but acts as a sort of private agency which provides personnel for ongoing research projects at SUNY HSC in Brooklyn. Therefore, it does not appear possible for the petitioner to have its own documented research findings (although its personnel may have been involved in documented research at SUNY HSC).

The petitioner, on motion, does not address or rebut the AAO's finding regarding the beneficiary's claimed international recognition, and therefore this finding stands.

In this matter, the petitioner has not established that it is a qualifying research organization, or that the beneficiary has been recognized internationally as outstanding in his field. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought, or that the petitioner is eligible to seek that benefit on the beneficiary's behalf.

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 previous decision of the Associate Commissioner will be affirmed, and the petition will be denied.

ORDER: The Associate Commissioner's decision of August 18, 1998, reissued January 22, 1999, is affirmed. The petition is denied.