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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

MAY 23 2003

File: [redacted] Office: NEBRASKA 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)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that 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 that 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The AAO reopened the petition on the petitioner's motion, and affirmed its prior decision. The matter is now before the AAO on a second 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 petitioner, an educational institution, filed the petition on August 3, 2000. The petitioner seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B), as an outstanding professor or researcher. The petitioner seeks to employ the beneficiary as a journalism instructor/faculty advisor (newspaper). The director determined that the petitioner's evidence did not "establish a showing of international recognition as required by the statute and regulations." The AAO concurred with the director's finding and dismissed the petitioner's appeal on November 29, 2001. The petitioner filed a motion to reopen the AAO's decision on December 17, 2001. The AAO affirmed its decision on September 23, 2002.

The pertinent statutory and regulatory language appears in the initial AAO decision and need not be repeated here in full. Where needed, we will cite relevant excerpts for clarity.

On motion, [redacted] dean of Humanities and Social Sciences at the petitioning college, addresses three areas: "Stability of Employment," "Teaching Experience" and "International Recognition." Regarding the first area, the AAO had previously found (in its November 29, 2001 decision) that the record lacked "a letter from the petitioner to the beneficiary reflecting a permanent job offer at the time of filing." Such a letter is required by 8 C.F.R. § 204.5(i)(3)(iii). The petitioner's first motion, filed in late 2001, did not address this finding (as the AAO observed in its September 23, 2002 decision). In the present motion, Dean [redacted] states that the AAO's "position is not consistent with the records furnished by us." Dean [redacted] observes that, in a letter dated October 11, 2000, she had indicated that the beneficiary's "appointment as the faculty adviser to our student newspaper and an instructor in the field of journalism is regular, continuing and stable in nature." The petitioner submits a copy of its most recent course catalog, listing the beneficiary as a member of the faculty.

The proper scope of the petitioner's latest motion is limited to issues discussed in the AAO's most recent decision, issued September 23, 2002, rather than to address issues that the petitioner had neglected to address previously. We will nevertheless briefly consider the petitioner's assertions in the interest of thoroughness. 8 C.F.R. § 204.5(i)(3)(iii)(A) requires the petitioner to submit a letter from "[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." Thus, the standard is not "regular, continuing and stable" employment, but rather "a tenured or tenure-track teaching position." The petitioner's catalog, submitted with the latest motion, indicates that the petitioner employs several categories of faculty, including "full-time," "part-time," "classified," and "exempt." It is not clear from the record which of these classifications receive tenure; the AAO has no obligation to assume that all faculty positions are tenured or tenure-track.

Furthermore, a letter addressed to immigration authorities, dated October 2000, is not "a letter . . . offering the alien a tenured or tenure-track position" as of the petition's August 2000 filing date. The petitioner has not shown that, as of the petition's filing date, it had already made a formal offer of tenured or tenure-track employment, and we note that, on motion, rather than taking the opportunity to refer to the beneficiary as a tenured faculty member, the petitioner has indicated only that the beneficiary's employment is "stable." If the beneficiary's position is not tenured or tenure-track (and was not so as of the petition's filing date), then that position does not conform to the requirements in the statute and regulations, and the petition cannot be approved.[1]

Regarding the issue of the beneficiary's past teaching experience, the regulation at 8 C.F.R. § 204.5(i)(3)(ii) requires evidence of "at least three years of experience in teaching . . . in the form of letter(s) from current or former employer(s)." Pursuant to *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Thus, the petitioner must show that the beneficiary had at least three years of qualifying teaching experience as of the petition's August 3, 2000 filing date.

Dean [redacted] asserts that, as of the petition's filing date, the beneficiary had accumulated more than "ten quarters (equivalent to over three academic years) of teaching experience." The AAO had, in its initial appellate decision, concluded that the record did not contain letters from the beneficiary's former employers as the regulation demands.

On motion, the petitioner submits a letter from [redacted] currently director of North Campus Operations at Wenatchee Valley College. Mr [redacted] asserts that he had hired the beneficiary in 1998 "to teach journalism and to supervise the student newspaper production at Green River Community College [GRCC] in Auburn, WA," and that the beneficiary moved to the petitioning institution "after a year at GRCC." The record contains nothing from GRCC itself. The initial filing of the petition included the beneficiary's resume, dated July 2000. The only work experience listed after 1995 is a position as director of Research and Public Relations at Hargus and Associates, Inc., a position that the petitioner continues to hold.

The July 2000 resume does not list any teaching positions at all. The argument could be made that the GRCC experience was simply omitted along with the beneficiary's other, more reliably documented teaching experience. This argument, however, raises another important question. If the beneficiary seeks to work as a professor in the United States, then it is far from clear why the beneficiary would, as late as July 2000, prepare a resume that emphasizes his public relations work and completely ignores his teaching work. Mr. [redacted] repeatedly describes the beneficiary's employment at Hargus as "full-time." Given that the beneficiary began working at Hargus shortly after completing his master's degree, it is not clear that the beneficiary has ever worked full-time as a professor, or that college instruction will be his primary activity. The same

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[1] The web site for the Seattle Community College system shows that the colleges do employ some tenured faculty members. See http://www.seattlecolleges.com/humanresources/default.asp?page=categories&category=faculty. Given that the petitioning college clearly employs some tenured faculty, it is significant that the petitioner has never referred to the petitioner's position as tenured or tenure-track, or documented the position as such.

letter that imputes to the beneficiary a year of experience at GRCC in 1998-1999 is also the letter that says he has worked full-time in public relations since 1995, an assertion consistent with the beneficiary's own resume. An alien working in public relations cannot qualify for immigration benefits as an outstanding professor simply because he teaches a journalism course when time permits. If, on the other hand, the beneficiary is a full-time employee of the petitioning college, then the continued references to full-time employment at Hargus demand some kind of explanation. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The final issue is whether the petitioner has established that the beneficiary is internationally recognized as an outstanding professor. To establish such recognition, the petitioner must meet at least two of six criteria listed at 8 C.F.R. § 204.5(i)(3)(i). On motion, Dean Wright lists four criteria that the petitioner claims to have met. The motion, however, includes no further discussion on this issue. The AAO has already addressed the petitioner's claims in this regard, and the petitioner's latest motion does not refute any of the AAO's prior findings in this regard; the petitioner simply expresses disagreement, without elaboration.

We again find that the petition was properly denied based on the pertinent statute and regulatory criteria. The petitioner cannot overcome the grounds for denial through the submission of new evidence that did not exist at the time of the petition's filing. A motion to reopen or reconsider must address the decision immediately prior to that motion. The petitioner has already had an opportunity to contest the director's decision and the AAO's first two decisions in this matter. The filing of a motion does not automatically entitle a petitioner to *de novo* readjudication of 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.

ORDER: The AAO's decision of September 23, 2002 is affirmed. The petition is denied.