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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

B3

[redacted]

JUL 29 2004

FILE: [redacted] Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary:

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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be dismissed.

The petitioner is a university. 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 in the United States as a senior research scientist in the field of viticulture. The director denied the petition, having determined that the petitioner had not established that the beneficiary (1) was offered a permanent position, or (2) is recognized internationally as outstanding in her academic field.

The AAO dismissed the petitioner's appeal on February 27, 2003, stating that the petitioner had established the permanent nature of the position offered to the beneficiary, but that the petitioner had not overcome the director's findings relating to the beneficiary's international recognition (or lack thereof).

On motion, the beneficiary submits a new letter and several documents. The motion documents are signed by the beneficiary, not by any official of the petitioning university.

8 C.F.R. 103.3(a)(1)(iii)(B) states: "*Meaning of affected party.* For purposes of this section and sections 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition." 8 C.F.R. § 103.5(a)(1)(iii)(A) indicates that a motion must be signed by the affected party. In this instance, the affected party is the petitioning university, not the beneficiary. The beneficiary's employment at the university does not give her standing to act on behalf of the university with regard to this petition.

Because the beneficiary is not an affected party in this proceeding, she has no standing to file a motion to reopen. The motion was not properly filed and, therefore, must be dismissed.

Furthermore, Citizenship and Immigration Services (CIS) regulations at 8 C.F.R. § 103.5(a)(1)(i) require that a motion to reopen or to reconsider must be filed within 30 days of the decision that the motion seeks to reopen or reconsider. Failure to file a motion to reopen within 30 days may be excused in the discretion of CIS where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner.

The motion in this case was not filed until July 30, 2003, over five months after the AAO issued its decision. The beneficiary states that the motion could not be filed any earlier owing to "transition affecting almost every level of the Administration" of the petitioning university, including the replacement of numerous top officials. The beneficiary states that this transition has delayed her "employment as a tenure track Associate Professor in Viticulture." The AAO, however, had already found that the petitioner had overcome the director's finding regarding permanent employment. Because this issue was no longer in dispute, there was no need to obtain further evidence in this regard. A delay of several months to obtain unnecessary documentation is not reasonable grounds to accept a late motion, even if it had been properly filed by the petitioner rather than by the beneficiary.

The late filing of the motion is, therefore, additional grounds for dismissal.

We note that the petitioner had previously offered the beneficiary a position as a senior research scientist. The beneficiary's appointment as an associate professor in 2003, years after the petition's 2001 filing date, cannot retroactively establish eligibility if the beneficiary was not already eligible at the time of filing. 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 CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998), and *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Immigration and Naturalization Service (now CIS) held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

As detailed above, the motion was untimely, and was not filed by an affected party. Pursuant to 8 C.F.R. § 103.5(a)(4), a motion that does not meet the requirements of a motion to reopen or to reconsider shall be dismissed.

ORDER: The motion is dismissed.