

U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

B3

FILE:

Office: NEBRASKA SERVICE CENTER

Date:

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IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as 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

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The director reaffirmed his decision on motion. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner sought to classify herself 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).

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.

The regulation at 8 C.F.R. § 204.5(i)(1) provides:

Any United States *employer* desiring and intending to employ a professor or researcher who is outstanding in an academic field under section 203(b)(1)(B) of the Act *may file an I-140 visa petition* for such classification.

(Emphasis added.) The regulation at 8 C.F.R. § 204.5(i)(3)(iii) provides that a petition must be accompanied by:

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.

The petitioner submitted multiple job offers, but filed the petition in her own behalf. The director denied the petition because it was improperly filed by the alien seeking classification as an outstanding researcher instead of an employer. Thus, the petitioner was statutorily ineligible for the benefit sought.

On motion, the petitioner asserted that she would join one of two universities that had offered her a job. The director concluded that the petitioner had not overcome the fact that the petition was not properly filed by the U.S. employer seeking to classify the petitioner as an outstanding professor.

On appeal, the petitioner states that she mistakenly sought classification as an outstanding professor and requests consideration as an alien of extraordinary ability pursuant to section 203(b)(1)(A) of the Act. The petitioner submits an amended petition.

The petitioner has not cited any provision that requires Citizenship and Immigration Services to consider a petition under more than one classification or that allows a petitioner to amend the classification sought at the appellate stage instead of filing a new petition with the appropriate fee. The petitioner has not demonstrated that the director erred in considering the petition under the classification requested. As such, we must uphold that decision.

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 appeal will be dismissed. This denial is without prejudice to the filing of a new petition, with fee, by a United States employer or a new self-petition in a classification that permits an alien to petition in her own behalf.

ORDER: The appeal is dismissed.