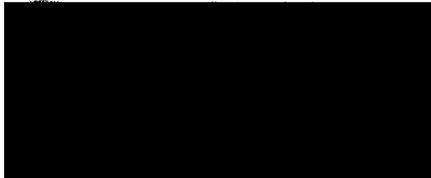


**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



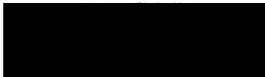
U.S. Citizenship
and Immigration
Services

PUBLIC COPY



BZ

FILE:



Office: NEBRASKA SERVICE CENTER

Date: SEP 07 2005

IN RE:

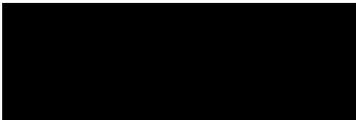
Petitioner:

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:



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. Wlemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

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 research assistant professor / research associate. The director determined that the petitioner had not established that it had offered the beneficiary a permanent job as of the date of filing.

On appeal, the petitioner submits evidence that the petitioner had extended the job offer accepted by the director as permanent prior to the date of filing. We find that the petitioner has now overcome the director's sole basis of denial.

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)(2), provides, in pertinent part:

Permanent, in reference to a research position, means either tenured, tenure track, or for a term of indefinite or unlimited duration, and in which the employee will ordinarily have an expectation of continued employment unless there is good cause for termination.

On Part 6 of the petition, the petitioner indicated that the proposed employment was a permanent position. The petitioner submitted a letter from [REDACTED] Head of the petitioner's department of biochemistry, molecular biology and biophysics, addressed to Citizenship and Immigration Services (CIS), asserting that the petitioner had offered the beneficiary a permanent position. This document does not constitute a job offer from the petitioner to the beneficiary. On December 24, 2003, the director requested evidence that the petitioner had extended a permanent job offer to the beneficiary.

In response, the petitioner submitted a January 27, 2004 letter from [REDACTED] addressed to the beneficiary offering him a position as a full-time research associate/assistant professor at a salary of \$37,367. The position is described as permanent and no conditions on the term of employment are specified other than the beneficiary's "adequate job performance." The director concluded that the January 27, 2004 letter could not establish the beneficiary's eligibility as of the date of filing.

On appeal, the petitioner submits a new letter to the beneficiary for the same position and salary dated August 16, 2001. The record now establishes that the petitioner offered the beneficiary the position of research associate prior to the filing date and that the position is a permanent position requiring cause for termination.

While the petitioner has overcome the director's sole basis of denial, we cannot uphold the director's finding that the petitioner has established the beneficiary's eligibility as an outstanding researcher. Therefore, this matter will be remanded for consideration of that issue. Specifically, the director may want to consider whether the petitioner has documented that [REDACTED] requires outstanding achievements of their members. We note that the petitioner has not submitted evidence regarding how [REDACTED] defines "noteworthy achievements." For example, we would not consider publication of one's work to necessarily be an outstanding achievement. The director should consider whether citations are published material about the beneficiary's work, as opposed to the author's own work. The director should also consider whether peer-review, routine in a field that requires numerous referees for the manuscripts submitted for publication, is indicative of international recognition, especially when the majority of those requests were from the petitioner's own supervisor. The director may also wish to consider whether the petitioner's publication record is sufficient to meet the scholarly articles criterion in light of the fact that the petitioner has documented only six cites, only three of which are from independent researchers. The director should consider whether the requests for reprints, which only show an interest in an article, are as persuasive as citations, which demonstrate reliance on the article.

As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.