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U.S. Department of Justice  
Immigration and Naturalization Service

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



File:  Office: Nebraska Service Center Date: 17 SEP 2002

IN RE: Petitioner:   
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)

IN BEHALF OF PETITIONER:  


**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.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a management and technological management company. 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 researcher, although the duties are specified as "metal forming, professional engineer." The director determined that the petitioner had not established that it employed at least three persons full-time in research positions or that it had achieved documented accomplishments in an academic field.

On appeal, the petitioner refers to a letter from American Axle and Manufacturing as evidence of its own accomplishments and asserts that it employs two welding engineers and two project engineers, both "design and research" positions.

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.

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.

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.

As stated above, the petitioner indicated on the Form I-140 that it was a management and technological management company. In a letter submitted with the petition, the Human Resources Representative of the petitioning company, [REDACTED], stated:

We are an internationally recognized company specializing in forging processes, which has been very successful in producing groundbreaking results. [The beneficiary] will be supervising and supported by other members of his field who will enable him to continue to break ground with his research and development efforts.

On June 26, 2001, the director requested additional evidence. Specifically, the director requested an offer of employment and evidence that the petitioner employs at least three full-time researchers and has documented achievements in an academic field.

In response, the petitioner submitted a letter entitled "re-offer of employment" dated June 29, 2001. The petitioner further stated:

Our achievements in [the areas of metal forming processing research and development of products and processes] are reflected in the output, product quality

and production efficiency and cost effectiveness of the operations of the many industries we service.

The petitioner submitted a letter from American Axle and Manufacturing. In that letter, Bryan Prucher, Director of Advanced Technology Development, states:

At American Axle and manufacturing, we have benefited immensely from the Resources from [the petitioner] in many proprietary areas covering Products Definition, Redesign and Process Development, with documented increased output, more effective Plant utilization, cost effective Production and better Materials utilization including tool life enhancement generally.

The nexus of Processing, Property, Structure and Application, so very well established and documented from years of Research and Development, have been effectively applied by the many Resources from [the petitioner] over the years, to many advantages in our Research and Development Projects efforts. As a result, many cases exist with documented increased throughput, profitability and effectiveness of resources, that these contributions are considered very outstanding and highly valued.

The director determined that the petitioning firm had not provided the job titles of its employees and, thus, had not established that it employed at least three full-time researchers. The director further determined that the petitioning firm itself was not performing any research, but was providing staffing for firms that do perform research. The director concluded that the record did not establish that the petitioner had documented achievements in the academic field.

On appeal, the petitioner asserts that it employs two full-time welding engineers and two full-time project engineers. The petitioner provides the following job descriptions:

A welding engineer is responsible for launching multiple programs for large OEM ranging from small labor-intensive jobs to large robotic and heavy automated installations. Candidates must design the components and process the equipment, and must understand the inherent capabilities of the stamping, pressing and welding processes. Candidate must understand statistics but also understand computers and software to manipulate them.

A Manufacturing Project Engineer is responsible for design, development, testing and control of major engineering projects involving tools, equipment, plant and manufacturing processes in a centralized manufacturing engineering activity where a considerable amount of creativity and initiative is exercised [sic] technical direction over the engineers or engineering support personnel with specific engineering objectives.

These job descriptions, while including a design component, do not describe a research position. It is noted that the Merriam-Webster Dictionary 595 (1974) defines research as a “careful or diligent search” or the “studious and critical inquiry and examination aimed at the discovery and interpretation of new knowledge.” Simply having design responsibilities does not mean that an employee is necessarily a researcher. Software engineers, architects, and even artists design products, but they are not researchers. Similarly, the welding engineers and manufacturing project engineers do not appear to be researchers. Thus, we concur with the director that the petitioner has not established that it employs at least three full-time researchers.

Finally, the regulations require documented achievements in an academic field. A letter from a company that does business with the petitioner providing general praise regarding the petitioner’s accomplishments is insufficient. The petitioner has not provided patents for discoveries made at the petitioning firm, major scholarly research articles resulting from research performed at the firm, or articles in the mainstream press relating to the petitioner’s achievements. Thus, we concur with the director that the petitioner has not demonstrated documented achievements in an academic field.

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.

**ORDER:** The appeal is dismissed.