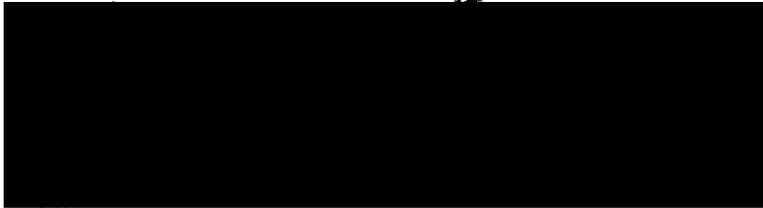


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invasion of personal privacy**

U.S. Department of Homeland Security
Citizenship and Immigration Services

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



File:

Office: Nebraska Service Center

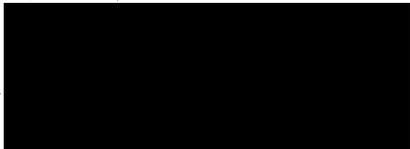
Date: DEC 10 2003

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:



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 Citizenship and Immigration Services (CIS) 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, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner, a university, 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 an "Assistant Scientist" in its Department of Medical Sciences. The director determined the petitioner had not established that it extended an offer of permanent employment to the beneficiary.

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)(3) states that a petition for an outstanding professor or researcher must be accompanied by:

(iii) 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 used in this section, the term "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. 8 C.F.R. § 204.5(i)(2).

At the time of filing, the petitioner submitted a letter, dated April 9, 2002, from Dr. [REDACTED] Professor and Chair, Department of Medical Sciences, University of Wisconsin-Madison, stating:

This is to certify that [the beneficiary] is currently employed at the School of Veterinary Medicine, Department of Medical Sciences, University of Wisconsin. He is appointed as an Assistant Scientist at an annual salary of \$36,000 per year, for the period 1 July 2002 through 30 June 2003. This is a permanent, full time position providing fringe benefits, including health insurance.

Most research and teaching positions at the University of Wisconsin-Madison are approved on an annually renewable basis, using the fiscal year period of July through June. Renewal each year is contingent upon satisfactory performance of duties. It is expected that [the beneficiary's] appointment will be renewed indefinitely on an annual basis, provided [the beneficiary] continues to perform his duties satisfactorily and provided research funding continues at the expected level.

On January 23, 2003, the director requested further evidence to demonstrate that the research position being offered to the beneficiary was permanent, as the pertinent regulations define that term.

In response, the petitioner submitted a copy of the job offer letter (dated July 30, 2001) from Dr. [REDACTED] Department of Medical Sciences, University of Wisconsin-Madison, to the petitioner. It states:



I am pleased to offer you an academic staff appointment as an Assistant Scientist in my laboratory... This is a full-time, fixed-term appointment at an annual full-time salary of \$36,000. Your initial appointment will begin on October 1, 2001 and continue through June 30, 2003. After that annual renewal will be possible on a fiscal year basis (July 1- June 30). This appointment is funded through my research grants. You will serve a twelve-month period of evaluation in accordance with UW-Madison's Academic Staff Policies and Procedures 2.04.

In regard to the above letter, the director's decision stated:

The letter is silent on the issue of whether or not the offer is for permanent employment rather than merely a term research assignment. Because the letter indicates that the employment is for a fixed term contingent on funding with an annual renewal possible, the Service must conclude that the offer of employment is not permanent as defined by regulation.

* * *

The [redacted] expectation that the beneficiary's appointment will be renewed on an annual basis suggests renewal of a temporary position rather than a permanent one. It also indicates that the petitioner is still in that temporary position, rather than being offered a permanent position. A renewable contract does not become permanent simply because it is renewed after a year, or even after two years if the contract still requires renewal every year.

We note the absence from the record of any documentation from the petitioning entity's human resources office pertaining to the job offer and its specific terms...

* * *

Because the petitioner is the university itself, rather than Professor [redacted] as an individual, we must see evidence the university's hiring officials and human resources department consider the beneficiary's employment to be permanent...

* * *

[The] beneficiary's wage is paid solely by outside grants. Even if the petitioner expects to continue employing the beneficiary, the employment is not truly permanent or indefinite if the appointment must repeatedly be extended or renewed.

In this matter, we concur with the director's finding that the evidence presented was insufficient to demonstrate a permanent job offer from the petitioner to the beneficiary.

On appeal, the petitioner submits a letter from [redacted] Director, Academic Personnel

Office, University of Wisconsin-Madison. [REDACTED] letter references two documents, *UW-Madison Unclassified Title Guidelines* and *UW-Madison Academic Staff Policies and Procedures*. A copy of the letter was included with the documentation submitted on appeal. In the initial part of his letter, [REDACTED] explains that the beneficiary's Assistant Scientist position is not a "postdoctoral appointment." The petitioner has established that the beneficiary's position as Assistant Scientist is not a postdoctoral appointment. However, for reasons to be explained below, we are not persuaded by [REDACTED] assertions that the research position offered to the beneficiary is permanent, as defined at 8 C.F.R. § 204.5(i)(2).

Stephen Lund states:

The type of academic staff appointment offered to [the beneficiary] is called "fixed term, renewable." This is a bit of a misnomer in that it suggests that a decision has to be made each year to renew the appointment. In fact, the opposite is true. It automatically renews unless action is taken to "nonrenew" the employee for good cause.

Renewable appointments continue for as long as there is funding, need and satisfactory performance. *UW-Madison Academic Staff Policies and Procedures* (ASPP) 2.01(1), copy attached, states that once an academic staff member successfully completes an evaluation period, employment can only be ended for reasons of "(1) funding loss, (2) a budget or program decision that requires a program to be discontinued, curtailed, modified, or redirected, (3) unsatisfactory performance, or (4) misconduct." These are the same reasons for termination associated with any other permanent job, including tenured faculty and civil service state jobs. Renewable academic staff who are given notice of termination have the right of appeal.

ASPP 2.01 states:

Academic staff appointments are fixed term, probationary, or indefinite.

1. *Fixed-Term Appointments*. Fixed-term appointments are renewable, rolling horizon, or terminal. An initial period of evaluation is required (2.04), during which an appointment may be ended without the right of appeal.

ASPP 2.04 states:

Initial fixed-term appointments in an operational area shall include a period of evaluation of at least six months, but not more than twelve months, during which the appointee may be dismissed at the discretion of the individual making the appointment and without the right of appeal. The duration of the period of evaluation shall be specified in the appointment letter.

[REDACTED] notes that, according to ASPP 2.01(1), an academic staff member must successfully complete an initial period of evaluation. Here, we refer back to the July 30, 2001 job offer letter to the beneficiary, which states: "You will serve a twelve-month period of evaluation in accordance with

UW-Madison's Academic Staff Policies and Procedures 2.04." If the job offer presented to the beneficiary was contingent upon his successful completion of an initial evaluation period, then it is not a permanent offer.

ASPP 2.01(1)(a) states:

Fixed-Term Renewable Appointment. The fixed-term renewable appointment is the most common appointment given to academic staff. This appointment is for the initial term specified in the letter of appointment and is renewable so long as the appointee renders satisfactory service, funds are available, and the directions or needs of the program do not change.

Appointments for terms up to and including one year renew for the same term unless the academic staff member receives a written notice to the contrary. A letter of reappointment is not required. If the term of appointment is increased, a letter of reappointment is required.

Appointment for terms of longer than one year, including multiple-year appointments, do not require a letter of reappointment during the original term. To renew the appointment for more than one year requires a reappointment letter.

states that renewable appointments are "considered by UW-Madison to be permanent positions. Approximately 85% of UW-Madison's 6,600 academic staff have this type of appointment." He adds: "Academic staff with renewable appointments are provided the same benefits that are provided to tenured faculty, including retirement benefits. This is indicative of permanent employment."

We cannot ignore, however, that UW-Madison also offers "indefinite appointments" for its academic staff. ASPP 1.03 defines an indefinite appointment as "an academic staff appointment having permanent status and for an unlimited term.... Indefinite appointments are neither limited to nor specific to any academic staff position or title series."

ASPP 2.01(3) states:

Indefinite appointment. This appointment type is used to recognize academic staff for outstanding performance and importance to the continuing mission of the unit.... The indefinite appointment grants the appointee permanent employment status and can be ended only for cause under ASPP 6 or for reasons of budget or program under ASPP.

The statute and regulations require the petitioner to demonstrate that a permanent job offer has been extended to the beneficiary and that the beneficiary qualifies as an internationally recognized outstanding researcher. Given the petitioner's claim that the beneficiary satisfies these requirements, it would be reasonable to expect the beneficiary to have earned an "indefinite appointment" to a research position at UW-Madison for his "outstanding performance," particularly since he has worked there since 1998.

ASPP 2.09 states that “[a]n indefinite appointment is an academic staff appointment with permanent status and for an unlimited term in a specified operational area.” Despite the assertions from [REDACTED] this is the only type of appointment at UW-Madison that its staffing policies and procedures refer to as “permanent,” “unlimited” or “indefinite” in nature. Moreover, in contrast to the terms describing the beneficiary’s fixed-term renewable appointment, these terms are completely consistent with CIS’ definition of a permanent research position at 8 C.F.R. § 204.5(i)(2).

In this matter, the job offer presented to the beneficiary clearly reflects a lesser degree of employment security than that of indefinite appointments or fixed-term rolling-horizon appointments. ASPP 2.05 states:

All fixed-term renewable appointees shall be eligible for consideration for fixed-term rolling-horizon or indefinite appointments.... Academic staff with seven or more years of service at UW-Madison shall be reviewed annually to determine whether a rolling-horizon or indefinite appointment should be proposed.

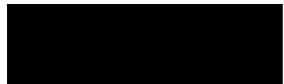
For the above stated reasons, we concur with the director’s finding that the petitioner had not established the extension of an offer of permanent employment to the beneficiary.

Beyond the decision of the director, we note that 8 C.F.R. § 204.5(i)(3)(i) requires that a petition for an outstanding professor or researcher be accompanied by “[e]vidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition.” The regulation lists six criteria, of which the beneficiary must satisfy at least two. It is important to note here that the controlling purpose of the regulation is to establish international recognition, and any evidence submitted to meet these criteria must therefore be to some extent indicative of international recognition. In this case, based on a cursory review of the evidence, it does not appear that the documentation presented would satisfy at least two of the regulatory criteria.

For example, the petitioner submitted an “Official Membership Certification Letter” confirming the beneficiary’s membership in the American Association of Cancer Research (“AACR”) as evidence under the “membership in associations in the academic field which require outstanding achievements” criterion. However, no evidence has been provided showing that AACR requires outstanding achievement as an essential condition for admission to membership.

In regard to the “authorship of scholarly books or articles...in the academic field” criterion, the evidence presented does not show that beneficiary has authored an unusual number of peer-reviewed journal articles in his field or that his work has been heavily cited among independent researchers throughout the world. Thus, the small number of citations presented, along with the beneficiary’s limited publication record, fail to establish that the beneficiary’s published work is internationally recognized as outstanding in his academic field.

In this matter, the petitioner has not established the beneficiary’s eligibility pursuant to section 203(b)(1)(B) of the Act and the petition may not be approved.



The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.