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U.S. Citizenship
and Immigration
Services

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FEB 20 2004

FILE: LIN 03 092 52647 Office: NEBRASKA SERVICE CENTER Date:

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)

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.

Mari Johnson

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 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 fellow. The director determined that the petitioner had not established that it had offered the beneficiary a qualifying, permanent position.

Section 203(b) of the Act states, in pertinent part:

(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.

Regulations at 8 C.F.R. § 204.5(i)(3) state that a petition for an outstanding professor or researcher must be accompanied by:

(i) Evidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition . . . ;

(ii) Evidence that the alien has at least three years of experience in teaching and/or research in the academic field . . . ; and

(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.

Pursuant to the regulation at 8 C.F.R. § 204.5(i)(2), "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.

Counsel states that the initial submission includes a "letter proving existence of job offer for permanent position," from Professor Michael R. Wasielewski. Prof. Wasielewski's letter reads, in pertinent part:

I am writing to verify our continuing offer to employ you as full-time research fellow at [the petitioning university] in the Department of Chemistry. . . . During your employment, you may expect to be reviewed annually. Policies and procedures pertaining to research staff appointments are found in the University's *Human Resources Policies and Procedures Manual*.

The record does not include a copy of the manual cited in [redacted] letter. Because the above letter does not indicate that the petitioner has offered the beneficiary a permanent research position, the director requested further documentation to establish the terms of the beneficiary's employment. In response, the petitioner has submitted a sworn affidavit from Associate [redacted] who states "[i]t is not a customary practice at [the petitioning university] for persons working in research positions, regardless of the length of the position, to sign contracts for such positions." This assertion explains the lack of a contract, although we note that the affidavit contains no indication that the beneficiary's position is permanent. Indeed, the affidavit never mentions the beneficiary or his specific position at all.

Prof. Wasielewski, in a new letter addressed to the petitioner, states "[y]our position remains for the indefinite future, assuming you wish to continue here."

The director denied the petition, stating that the beneficiary appears to hold a renewable temporary appointment, rather than a permanent position. The director noted "the traditionally temporary nature of postdoctoral positions," and asserted that the petitioner had submitted nothing to show that the university as a whole, rather than Prof. Wasielewski as an individual, considered the beneficiary's position to be permanent. None of the letters from anyone associated with the university contains the word "permanent" in reference to the beneficiary's position.

On appeal, counsel argues that [redacted] assertion that the beneficiary's "position remains for the indefinite future" establishes permanent employment, even if [redacted] letter did not contain the actual word "permanent." Counsel cites [redacted] affidavit, which indicates that "the department chair or other personnel in the department send the letter offering a researcher a position here." Counsel asserts that this affidavit shows that "Prof. Wasielewski is [the petitioning university] for the purpose of this

position as he is the authorized person offering employment on behalf of the university's Department of Chemistry," and therefore the petitioner should not have to present any documentation at all from the university's human resources personnel.

The director, in denying the petition, observed that the petitioner's own web site indicates that research staff appointments are temporary. The "Office of Research" section of the petitioner's web site contains information regarding research staff appointments at <http://www.northwestern.edu/research/policies/res-appointments.html>. That page indicates that "[r]esearch staff appointments are approved by the Associate Vice President for Research. *Appointments are for a fixed term up to three years*" (emphasis added). A section headed "Procedure for initial appointment or renewal" indicates that research staff appointments pass through several levels, including "the Department of Human Resources." Prof. Wasielewski had used the exact phrase "research staff appointments" in his job offer letter to the beneficiary.

Counsel, on appeal, maintains that [REDACTED] letter "seems more persuasive evidence than some web page of general policy." We reject this argument. The petitioner's "web page of general policy" represents the official position of the university, rather than the assertions of one employee of that university. Also, given counsel's stipulation that the "web page" demonstrates the petitioner's "general policy," the burden is on the petitioner to demonstrate that Prof. Wasielewski is authorized to set university policy, or to make hiring decisions that are not consistent with that policy. Absent strongly compelling evidence to the contrary, we conclude that the university's official, published policies carry more weight than correspondence from a professor at that university. We also note that Prof. Wasielewski's own letter to the beneficiary contains references to university policy regarding "research staff appointments," demonstrating that he himself considers the university's policies to be relevant and applicable to the beneficiary's position.

The petitioner has submitted no documentation at all to show that its research staff appointments policy is optional, or that its own published version of that policy is rife with uncorrected errors. The petitioner has either failed or refused to provide human resources documentation regarding its employment of the beneficiary, despite the director's repeated requests for official university documentation to support the claims set forth in letters. Counsel's opinion that the petitioner's own hiring policy is no more than "some web page" is entirely without consequence. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner has failed to establish that the beneficiary's position as a research fellow is permanent. The petitioner's published policy indicates that research staff appointments are "for a fixed term." We have no firm basis to conclude that the petitioner has offered the beneficiary a permanent research position, and considerable evidence to support the opposite conclusion. Therefore, the petitioner has not established that it has offered the beneficiary a qualifying, permanent position.

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.