



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **OCT 20 2004**

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

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

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

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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 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 Form I-140 petition indicates that the petitioner seeks to employ the beneficiary as an "Associate Director/Instructor." The director determined the petitioner had not established that it offered the beneficiary a permanent research position in his academic field.

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.

Because the petitioner is a United States university, the job offer must satisfy 8 C.F.R. § 204.5(i)(3)(iii)(A) or (B) cited above. The original job offer letter from Washington State University (dated October 24, 2002) states that the beneficiary is being offered "a permanent, full-time, **non-tenure track** faculty appointment as Associate Director of the Center for the Study of Animal Well-being and Head of People-Pet Partnership with an annual salary of \$47,146.00." [emphasis added] Therefore, because the position being offered is non-tenure track, the petitioner must demonstrate that its job offer satisfies 8 C.F.R. § 204.5(i)(3)(iii)(B): "A United States university or institution of higher learning offering the alien a permanent research position in the alien's academic field."

On July 15, 2003, the director issued a request for evidence notice stating:

As per the regulations, your offer of employment must offer the beneficiary one of the following:

- 1) a tenured or tenure-track teaching position in his academic field; or,
- 2) a permanent research position in his academic field

Your letter of October 24th is clear that you did not offer him the former, and it is nearly clear that you did not offer him the latter, i.e., there is no evidence that you expect the beneficiary to engage in research. Please submit evidence that the position which you are offering to the beneficiary is in accordance with one of the two types which the regulations specify...

In response to the director's request for evidence, the petitioner submitted a letter from [REDACTED] Dean, College of Veterinary Medicine, Washington State University (WSU), dated August 29, 2003. [REDACTED] states: "In addition to his teaching and administrative duties, CVM [College of Veterinary Medicine] expects [the beneficiary] to dedicate at least 25% of his efforts to research activities."

The director concluded the evidence was not persuasive that "the beneficiary is being offered what may accurately be called a research position." The director found that the position offered did not require the beneficiary to devote the majority of his time to research.

On appeal, counsel states: "The NSC [Nebraska Service Center] did not find that [the beneficiary's] position entails research in his academic field." Counsel's observation misstates the director's findings. The director's decision specifically acknowledged that the beneficiary's research position "does entail some incidental research activity." According to the August 29, 2003 letter from [REDACTED] the beneficiary's position requires him to devote at least one quarter of his efforts to research activities. The issue here is not whether the beneficiary's position entails research activity, but, rather, the amount of time he devotes to

research activity. Without evidence showing that the vast majority of the beneficiary's duties at WSU entail conducting research in his academic field, it cannot be concluded that he holds a research position in accordance with Section 203(b)(1)(B)(iii)(II) of the Act and the corresponding regulation at 8 C.F.R. § 204.5(i)(3)(iii)(B).

The petitioner's appellate submission includes a letter co-signed by [REDACTED] Acting Dean, College of Veterinary Medicine, WSU, and [REDACTED] Provost, WSU. Their letter, dated November 13, 2003, states:

WSU would like to clarify that the position of Associate Director of the Center for the Study of Animal Well-being and Head of People-Pet Partnership offered to [REDACTED] is indeed a permanent research position in his academic field. In addition to his administrative and teaching duties, [REDACTED] is mandated to spend the equivalent of 25% of his efforts on research activities...

* * *

[REDACTED] position involves three mandatory components: research, teaching, and the administration of community service programs. Below is an outline of these components (for a full job description, please refer to Attachment E, Job Description):

1. [REDACTED] is required to conduct research related to his field of expertise (the human-animal bond), and perform duties normally related to conducting research (grant writing, data collection, publish scientific papers, attend and participate in scientific meetings and conferences).
2. [REDACTED] is also expected to teach Professional Orientation and Ethics (VM 500) and Reverence for Life (VM 505), and to supervise undergraduate and graduate level students in various academic endeavors.
3. In addition [REDACTED] coordinates two community service programs in the College of Veterinary Medicine: Pet Education Partnership, and Palouse Area Therapeutic Horsemanship (PATH).

Attachment E of the appellate submission, entitled "Position Description," indicates that the "estimated percentage of time required" for items 1, 2, and 3 above is 25%, 25%, and 50%, respectively. Clearly, the majority of the beneficiary's time spent in this position involves teaching (25%) and overseeing the Pet Education Partnership and Palouse Area Therapeutic Horsemanship community service programs (50%) rather than conducting research in his field (25%).

A review of the evidence presented does not show that the beneficiary's primary job function at WSU is to conduct research in his academic area. While the position offered involves some incidental research activity, we cannot conclude that the job offer in this case satisfies 8 C.F.R. § 204.5(i)(3)(iii)(B).

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.