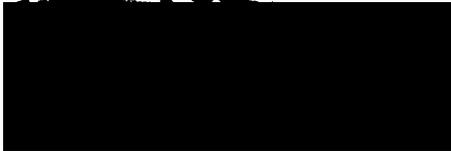


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FILE: LIN 04 139 51430 Office: NEBRASKA SERVICE CENTER Date: **AUG 22 2005**

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.

Maif 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 sustained and the petition will be approved.

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 an assistant scientist. 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 beneficiary's position is a civil service permanent appointment.

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 Dr. [REDACTED] Head of the petitioner's Southern Research and Outreach Center, addressed to Citizenship and Immigration Services (CIS), asserting that the petitioner had offered the beneficiary an assistant scientist position. This document does not constitute a job offer from the petitioner to the beneficiary. On May 6, 2004, the director requested evidence that the petitioner had extended a permanent job offer to the beneficiary.

In response, the petitioner submitted a June 26, 2002 letter from [REDACTED] the petitioner's business manager, to the beneficiary offering him a position as a full-time assistant scientist. In a separate letter, Dr. [REDACTED] Associate Dean for Research and Outreach for the petitioner, asserts that the position has no end date. The director concluded that the only letter addressed to the beneficiary did not reference the length of the appointment and, thus, did not constitute a permanent job offer.

On appeal, the petitioner submits a new letter to the beneficiary confirming the terms of the July 1, 2002 appointment. The new letter confirms that the position of assistant scientist is a civil service position with no end date that has an "indefinite duration subject to Civil Service Rules on just cause disciplinary action." The record now establishes that the petitioner offered the beneficiary the position of assistant scientist prior to the filing date and that the position of assistant scientist is a civil service permanent position requiring cause for termination.

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 sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.