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

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FILE:

LIN 05 276 52901

Office: NEBRASKA SERVICE CENTER

Date:

SEP 14 2006

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a medical research and development 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). According to the petition, the petitioner seeks to employ the beneficiary in the United States as a research scientist. The director determined that the petitioner had not established that it employed at least three full-time researchers.

On appeal, counsel submits a brief and additional evidence.

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.

(Emphasis added.) The petitioner submitted a grant application filed by the petitioner listing one principal investigator and eight co-investigators including the beneficiary, all of whom are listed as working for the petitioner. On December 13, 2005, the director requested evidence that the petitioner employed at least three full-time researchers.

In response, the petitioner submitted a statement, Internet materials and resumes of its employees. Considering the employee's other responsibilities with the petitioner and other entities, the director concluded that the petitioner had not demonstrated that at least three of its employees were engaged in full-time research activities.

On appeal, Dr. [REDACTED] the petitioner's Vice President for Operations, asserts that he is a full-time employee of the petitioner who performs duties for other small organizations on his own time. Dr. [REDACTED] further asserts that his primary responsibilities for the petitioner are to direct research, making him a full-time researcher. We note that Dr. [REDACTED] is listed on the grant application as a co-investigator. Dr. [REDACTED] continues that [REDACTED] is a full-time research and development engineer and that [REDACTED] and [REDACTED] are research assistants with the petitioner. The petitioner submits the job offer letters and resumes of Mr. [REDACTED] Mr. [REDACTED] Mr. [REDACTED] and Mr. [REDACTED] demonstrating that these individuals were employed in these positions prior to the date of filing. Thus, we are satisfied that the petitioner employs at least three individuals engaged in full-time research activities.

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 met that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.