

22.2(c) Employment-based Petitions (Forms I-140) [Revised 06-06-2006]

[The following guidance and its subheadings will appear in the *Adjudicator's Field Manual* as part of an upcoming and completely revised Chapter 22 (Employment-Based Petitions, Entrepreneurs and Special Immigrants). The following information is critical; thus, it is being posted now.]

(2) Outstanding Researchers and Professors

8 CFR 204.5(i)(3)(iii) requires an offer of employment as initial evidence in support of a first preference petition filed on behalf of an outstanding professor or researcher. The offer of employment may be in the form of a letter from the petitioning employer (i.e., U.S. university or institution of higher learning or a department, division, or institute of a private employer) stating that the employment is a tenured or tenure-track teaching position or a "permanent" research position in the alien's academic field. See 8 CFR 204.5(i)(3)(iii)(A)-(C). The word "Permanent," in reference to a research position, is defined as:

"either tenured, tenure-track, or for an 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 CFR 204.5(i)(2).

(A) "Permanent" for Research Positions

Adjudicators should not deny a petition where the employer is seeking an outstanding researcher solely because the actual employment contract or offer of employment does not contain a "good cause for termination" clause. The petitioning employer, however, must still establish that the offer of employment is intended to be of an indefinite or unlimited duration and that the nature of the position is such that the employee will ordinarily have an expectation of continued employment.

For example, many research positions are funded by grant money received on a yearly basis. Researchers, therefore, are employed pursuant to employment contracts that are valid in one year increments. If the petitioning employer demonstrates, however, the intent to continue to seek funding and a reasonable expectation that funding will continue (such as demonstrated prior renewals for extended long-term research projects) such employment can be considered "permanent" within the meaning of 8 CFR 204.5(i)(2).

Adjudicators should also consider the circumstances surrounding the job offer as well as the benefits attached to the position. A position that appears to be limited to a specific term, such as in the example above, can meet the regulatory test if the

position normally continues beyond the term (i.e., if the funding grants are normally renewed).

(B) Tenure or Tenure-Track Positions

The determination as to whether a position qualifies as a tenured or a tenure-track position is not linked to the regulatory requirement that the position be “permanent” as defined in 8 CFR 204.5(i)(2). 8 CFR 204.5(i)(2) applies only to “research positions.”

Adjudicators do not need to evaluate whether the employment contract for a tenured or tenure-track position has a “good cause for termination” clause, and should not deny a petition seeking an outstanding professor for a tenured or tenure-track position on that basis alone.

Adjudicators, however, should continue to evaluate whether the overall nature of the position is tenured or tenure-track. Note, USCIS will not equate tenured or tenure-track positions with those that are temporary, adjunct, limited duration fellowships or similar positions, where the employee has no reasonable expectation of long-term employment with the university.