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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JAN 06 2005
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IN RE: Petitioner: [redacted]
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:

[redacted]

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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

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 initially sought to employ the beneficiary permanently in the United States as an assistant professor to conduct veterinary research. The director determined that the petitioner had not established that it had offered the beneficiary a permanent job.

On appeal, the petitioner submits additional letters, including a January 18, 2004 letter offering the beneficiary a permanent research position with the title "research scientist." As will be discussed below, the new evidence raises questions that the Service Center, due to its clearer authority to request additional evidence, is better equipped to addressed. Moreover, we find that the director's decision fails to discuss whether the beneficiary qualifies as an outstanding researcher. Given the questions arising from the basis of the director's decision, we find that the director should address the much more substantial issue, the beneficiary's eligibility. Thus, we will remand the matter to the director for these determinations.

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)(iii) provides that a petition must be accompanied by:

> 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.

In addition, 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 job title for the proposed employment was "Assistant Professor." The nontechnical job description is "conduct research in veterinary science more specifically in equine internal medicine and molecular [sic]." The petitioner submitted a letter from Dr. Senior Associate Vice President for Research. The letter is addressed to Citizenship and Immigration Services (CIS) and provides:

> Also, the job set forth on the immigrant petition for alien worker (I-140) form is still being offered to him under the same terms and conditions as those set forth on the form. To summarize, the job is for an Assistant Professor and Researcher including a salary of $73,512/year. [The beneficiary] has accepted the terms of employment and he will become a permanent member of our staff upon approval of his application for permanent residence.

On September 30, 2003, the director requested "a complete copy of the actual offer of employment made by [the petitioner] to [the beneficiary]." In response, the petitioner submitted another letter from Dr. sserting that the beneficiary was working for the petitioner as an assistant professor and that "it is anticipated that he will remain a member of our staff upon approval of his application for permanent residence." The petitioner also submitted a letter signed by six faculty members at the petitioning university, but this letter merely requests approval of the petition.

In his final decision, the director concluded that the petitioner had not submitted a copy of an employment offer made by the petitioner to the beneficiary. The director expressed a willingness to consider "all evidence having a bearing on the issue," but stated that the petitioner must provide "the specific terms contained in the offer of employment made by the employing institution."

On appeal, counsel asserts that the petitioner attested to the permanent nature of the position being offered on

the petition itself and affirmed those terms in the letter from Dr. The petitioner submits a letter from Dr. Chair of the Department of Veterinary Medicine at the petitioning university, and College Human Resources Officer, asserting that the beneficiary "did not receive a formal letter of permanent employment until recently." The petitioner also submits another letter from Dr. and Ms. this one addressed to the beneficiary, offering a permanent position as a research scientist.

In addition, the petitioner submits its "Guidelines for Permanent Residency Sponsorship." These guidelines indicate that the position must be full-time, defined as "regular," and indefinite with no set end date. Finally, the petitioner submits information on research scientist appointments. These materials reflect that those with "regular" appointments may be reclassified to a research scientist position, suggesting these positions are not "regular." In addition, the materials provide:

> Qualified persons may be appointed for indefinite periods of time and renewals of appointment are contingent upon satisfactory performance as determined by the supporting unit and the department chair.

At the outset, we do not find that selecting "permanent" on the Form I-140 petition establishes that a legally binding permanent job offer has been made. The most persuasive evidence to establish a permanent job offer is a letter from an individual with hiring authority at the petitioning entity to the beneficiary or an employment contract between the petitioner and beneficiary. Assuming the January 2004 letter constitutes a permanent job offer from the petitioner to the beneficiary, it is dated after the date of filing and cannot establish the beneficiary's eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

Nevertheless, the materials submitted on appeal suggest that the office of the vice president of research does have final hiring authority. As such, the director should have afforded more weight to the letter submitted initially. The evidence submitted on appeal, however, raises questions that are best addressed at the Service Center level. Specifically, the job offered on appeal is not the job offered on the petition and in the initial letter from Dr. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). Moreover, the materials further suggest that at least some research scientists must have their contracts renewed, although the petitioner's January 2004 letters makes no reference to renewals.

The director should inquire as to whether the job offered, and accepted, on appeal is the same job offered initially. If not, the director should request evidence that the assistant professor position is an indefinite position not subject to contract renewal.

Beyond the scope of the director's decision, 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:

> (ii) Evidence that the alien has at least three years of experience in teaching and/or research in the academic field. Experience in teaching or research while working on an advanced degree will only be acceptable if the alien has acquired the degree, and if the teaching duties were such that he or she had full responsibility for the class taught or if the research conducted toward the degree has been recognized within the academic field as outstanding. Evidence of teaching

> and/or research experience shall be in the form of letter(s) from former or current employer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien.

Further, the regulation at 8 C.F.R. § 204.5(i)(3)(i) states that a petition for an outstanding professor or researcher must be accompanied by "[e]vidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition." The regulation lists six criteria, of which the petitioner must satisfy at least two. It is important to note here that the controlling purpose of the regulation is to establish international recognition, and any evidence submitted to meet these criteria must therefore be to some extent indicative of international recognition. The petitioner claims to have satisfied the following criteria.

Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field

The director should evaluate whether the petitioner has established that the beneficiary has received the university awards and the German research award claimed and whether the petitioner has established that these awards are indicative of or uniquely consistent with international recognition. In addition, the director should evaluate whether research grants constitute awards for outstanding achievement.

Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members

The director should evaluate whether the petitioner has established that the beneficiary is a member of the American Society for Bone and Mineral Research (ASBMR), the American College of Veterinary Medicine (ACVIM) and the Panamanian Association of Veterinary Medicine as claimed. In addition, the director should evaluate whether the petitioner has established that these associations limit their membership to those with demonstrated outstanding achievements.

Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field

The director should evaluate whether reviewing one manuscript each for two journals is indicative of or uniquely consistent with international recognition. We note that scientific journals are peer reviewed and rely on many scientists to review submitted articles. Thus, peer review is routine in the field; not every peer reviewer enjoys international recognition.

Evidence of the alien's original scientific or scholarly research contributions to the academic field

The director should evaluate whether five letters from professors in the United States, three of whom work for the petitioning university where the beneficiary works, establish that the beneficiary's contributions to the field have garnered him international recognition. In considering the reference letters, we note that, obviously, the petitioner cannot satisfy this criterion simply by listing the beneficiary's past projects, and demonstrating that the beneficiary's work was "original" in that it did not merely duplicate prior research. Research work that is not original would be unlikely to secure the beneficiary a master's degree, let alone classification as an outstanding researcher. Because the goal of the regulatory criteria is to demonstrate that the beneficiary has won international recognition as an outstanding researcher, it stands to reason that the beneficiary's research

contributions have won comparable recognition. To argue that all original research is, by definition, "outstanding" is to weaken that adjective beyond any useful meaning, and to presume that most research is not original.

Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field

While the beneficiary had authored several articles as of the date of filing, the director should evaluate whether the beneficiary's citation history, eight independent citations for one article, one independent citation for a second article, three independent citations for a third article, and two independent citations for a fourth article, reflect that the beneficiary's publication history is indicative of or uniquely consistent with international recognition.

Therefore, this matter will be remanded for consideration of whether the petitioner offered the beneficiary the same position listed on the petition and whether the petitioner has demonstrated that the beneficiary is an outstanding researcher as defined in the regulations quoted above. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.