

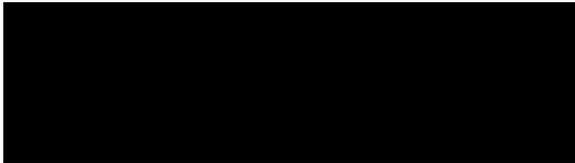
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
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U.S. Citizenship
and Immigration
Services

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FILE: LIN 04 212 50280 Office: NEBRASKA SERVICE CENTER Date: AUG 17 2007

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

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

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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.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 an institution of education and research. 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 a research associate. 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 a new letter from the Assistant Vice President of the petitioning university affirming that Dr. Sonny Ramaswamy, the beneficiary's department head who issued the initial job offer letter, has the authority to make offers of employment and hire personnel within the department.

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 [REDACTED] addressed to the beneficiary offering a "Postdoctoral Research Associate" position "of indefinite duration with the expectation of continued employment, unless there is good cause for termination, such as not meeting performance standards." On August 19, 2004, the director requested evidence that the petitioner's office of human resources considers the beneficiary's employment permanent and that [REDACTED] has hiring authority.

In response, the petitioner submitted a new letter from [REDACTED] affirming that the beneficiary's position is permanently appropriated and evidence of the beneficiary's employment benefits. In his final decision, the director stated that most postdoctoral appointments are temporary, although he acknowledged that Citizenship and Immigration Services (CIS) "must rely on the specific terms contained in the actual offer of employment made by the employing institution." The director concluded that the petitioner had not demonstrated that postdoctoral appointments at the petitioning university "differ from the norm in this regard." Finally, the director concluded that the record lacked evidence of [REDACTED] hiring authority.

On appeal, Gary Leitnaker, an assistant vice president for the petitioning university, confirms [REDACTED] hiring authority.

The record contains a job offer issued to the beneficiary, the initial letter from [REDACTED]. That letter specifies that the position offered is indefinite. We do not find that by referencing the "position" as indefinite, [REDACTED] was indicating that while the position would exist, the offeree would be hired at will or for a specific term. [REDACTED] in his offer to the beneficiary, specifically states that the beneficiary could only be fired for cause. The record does not contain anything that contradicts this assertion or other inconsistencies that have not been resolved. On appeal, the petitioner has overcome the director's legitimate concern regarding the lack of evidence of [REDACTED] hiring authority. Thus, the petitioner has overcome the director's sole basis of denial.

Therefore, this matter will be remanded for consideration of whether the beneficiary qualifies as an outstanding researcher as defined in the regulation at 8 C.F.R. § 204.5(i)(3)(i). Specifically, the director may want to consider whether the beneficiary's scholarships and fellowships, not well documented to begin with, constitute major awards or prizes; whether the beneficiary's memberships require outstanding achievements (beyond academic accomplishments) of their members; whether serving as a peer-reviewer for three journals is significant;¹ whether the reference letters, most of which are from the beneficiary's own circle of colleagues and all of which provide limited detail regarding how the beneficiary's work has already been applied in the field, establish his original contributions to the field (in a manner indicative of international recognition) and whether the requests for reprints, in the absence of evidence that the beneficiary is *widely cited*,² is sufficient evidence of

¹ The director may wish to consider that scientific journals are peer reviewed and rely on many scientists to review submitted articles.

² Of the four articles that cite the beneficiary's work submitted, one of them is a self-cite by the beneficiary and another is a self-cite from one of the beneficiary's coauthors. The director may wish to consider whether this evidence is indicative of the beneficiary's international recognition.

the significance of his scholarly articles. 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.