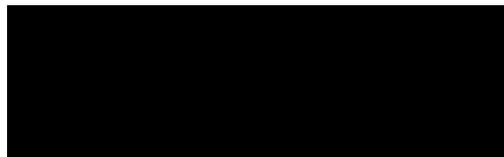


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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services



B3

FILE: LIN 03 238 50196 Office: NEBRASKA SERVICE CENTER Date: SEP 15 2005

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.

*Maigluson*

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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.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 in the United States as a research associate, but subsequently promoted the petitioner to assistant research 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 a job offer dated September 2, 2002, for a position "without an end date" and evidence that her current position has no end date.

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.

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 John W. Woodring, Payroll Supervisor II addressed to "Whom It May Concern" verifying the petitioner's "permanent employment" as a "Research Associate II." On July 30, 2004, the director requested evidence that the petitioner had extended a permanent job offer to the beneficiary.

In response, the petitioner submitted a letter addressed to the petitioner dated June 23, 2004 offering the petitioner a position as an assistant research scientist. The director determined that this letter did not constitute a permanent job offer and was not the same job offer as that listed on the petition.

As stated above, the letter submitted on appeal, dated prior to the filing of the petition, offers the beneficiary a position "without an end date." As such, at the time of filing the beneficiary had been offered and was working in a permanent position. On appeal, the petitioner also demonstrates that the beneficiary's current position is permanent. The record is clear that this new position is a promotion, and not an unrelated position with unrelated duties. Thus, the petitioner has overcome the director's concerns.

Therefore, this matter will be remanded for consideration of whether the beneficiary has international recognition, the statutory standard for outstanding researchers. Specifically, the director may wish to consider whether the petitioner has established that the associations of which she is a member require outstanding achievements of their members and whether the letters from her immediate circle of colleagues and articles without evidence of citation are indicative of international recognition.

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.