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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: **MAR 02 2010**
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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:
[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 Rhew
Perry Rhew
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 (AAO) on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a laser manufacturer. 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 manufacturing electro-optic engineer. The director determined that the petitioner had not established that it had offered the beneficiary a research job as of the date of filing.

On appeal, counsel submits a brief and a detailed job description from the petitioner. Based on the entire record, including the job description submitted on appeal, we find that the petitioner is offering the beneficiary a research position with other duties only incidental to that research.

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.

On Part 6 of the petition, the petitioner indicated that the proposed employment was a permanent position as a manufacturing electro-optic engineer. Initially, the petitioner asserted that the beneficiary would conduct original scientific investigation of design and development of the next generation of extended cavity diode lasers. He would introduce new products and sustain current production lines, develop new products, transition products to manufacturing and improve the manufacturing process. In response to the director's request for a breakdown of the beneficiary's duties, the petitioner indicated that the beneficiary would spend 30 percent of his time leading new product introduction for new laser products. This duty includes planning and executing experiments followed by data analysis. Second, the beneficiary would spend 20 percent of his time on the manufacturing process, including training staff but also solving technical problems and improving the process to reduce costs or increase performance. Third, the beneficiary would spend 20 percent of his time on quality improvements of the laser products, including designing and performing experiments to test product performance against customer demand. Fourth, the beneficiary would spend 15 percent of his time troubleshooting and performing data acquisition and analysis on product failures at the statistic level. Finally, the beneficiary would spend 15 percent of his time dealing with customer technical issues including providing scientific guidance to customer service team members and customers, directing communication and customer visits in solving technical and application related problems and training field application engineers on basic science and technical details of laser products.

The director concluded that only a small amount of time would be spent planning and executing experiments and that the remaining duties are "more akin to production management and engineering than qualifying research in the academic field."

On appeal, the petitioner asserts that since being hired, the beneficiary has been spending the majority of his time designing new laser technologies and products, making breakthroughs in extremely challenging areas. Specifically, his work led to the implementation of a robust marketable laser system providing a super narrow linewidth with full degrees of tenability. His work has also resulted in a novel method of impedance matching, achieving the suppression of optical frequency noises of lasers to an undetectable level. There appears to be no question that the 30 percent of the beneficiary's time spent on new product introduction constitutes research. We will address the beneficiary's remaining duties below.

The petitioner further explains that the beneficiary's time spent on maintaining the laser manufacturing line is the end phase of designing new laser products, which requires designing the laser manufacturing architecture and performing experiments to optimize the building and testing scheme. In addition, the petitioner explains that the beneficiary's time spent on product performance and quality is part of the petitioner's research budget and that the beneficiary has already improved the wavelength stability of the petitioner's external cavity diode laser systems to a record high level. Further, the petitioner explains that its lasers are primarily provided to scientific research groups and that the beneficiary's time spent on troubleshooting involves studies of the product and the projects for which the product is designed. The petitioner explains that the beneficiary's "research work in fulfilling this task has led not only to corrective actions on all failure modes but opening up new directions on pushing our tunable laser technology to higher standards." Finally, the petitioner asserts that the beneficiary's time spent on customer service requires broad scientific knowledge and an understanding of the research work of the petitioner's customers, including designing and performing experiments to study the fundamental phenomena the customers are exploring.

Based on the above, it is apparent that all of the beneficiary's tasks except perhaps the last task consist primarily of research duties. Even if we concluded that this final task is not primarily research, it is only 15 percent of the beneficiary's time and relates to the other tasks which appear primarily research based. Thus, we are satisfied that the petitioner has offered the beneficiary a research position.

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.