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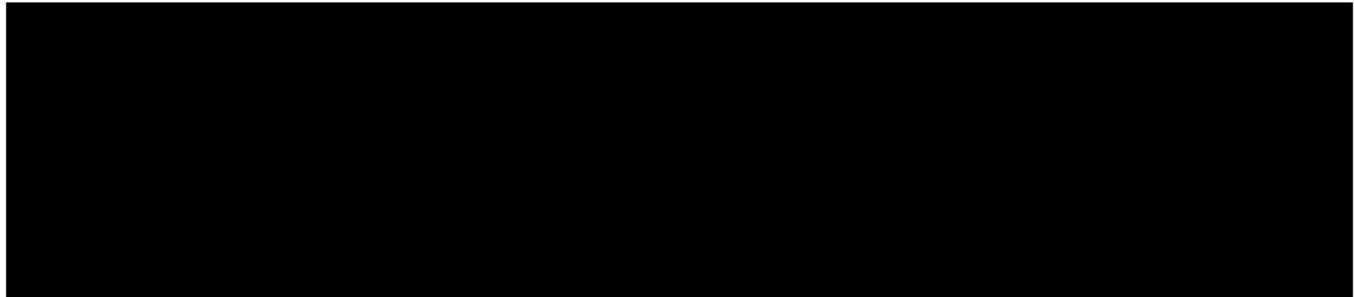
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

B₃



FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: OCT 07 2010

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

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 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). According to the petition, the petitioner seeks to employ the beneficiary in the United States as a Research Assistant Professor. The director determined that the petitioner had not established that it had offered the beneficiary a permanent research position.

On appeal, the petitioner submits a letter of support discussing the terms of the beneficiary's "Research Track" position and resubmits a copy of the "University of Cincinnati College of Medicine Faculty Guidelines."

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.

This petition was filed on February 22, 2008 to classify the beneficiary as an outstanding researcher in bioinformatics. On Part 6 of the petition, the petitioner indicated that the proposed employment was a permanent position. The petitioner submitted a [REDACTED]

[REDACTED] addressed to the beneficiary, stating:

It gives us pleasure to offer you the position of [REDACTED] in the Department of Environmental Health [DEH] . . . effective on November 27, 2006 through August 31, 2007. This is a research track position, and you are not eligible to stand for tenure within this track. Reappointment to this position is contingent both on performance and continuation of funding. Your reappointment dossier must be submitted to the first level of review by December 1, 2006

* * *

In addition to active participation in collaborative research and obtaining funding through collaborative grants, you will be expected to obtain independent sources of funding for a growing fraction of your salary, starting in the third year of your appointment. All grants will be submitted and administered through the DEH. Reappointment is contingent upon generation of 95% of external funding.

Your employment type is designated as strict full time paid entirely by the University

The petitioner also submitted a

On April 24, 2009, the director requested further evidence that the petitioner had extended a permanent job offer to the beneficiary.

In response, the petitioner submitted a September 24, 2008 memorandum from the Senior Vice President for Academic Affairs and Provost at the University of Cincinnati to the beneficiary reappointing him to the rank of Research Assistant Professor effective 09/01/2009 through 08/31/2010. The memorandum states that subsequent reappointment is contingent upon the continued availability of external funds to support the beneficiary's research and salary. The petitioner also submitted a May 22, 2009 letter from [REDACTED] stating that the beneficiary is a collaborator on several grant applications which include requests for money to support his salary and that he will continue to be reappointed provided he maintains his employment eligibility and covers 95% of the funding for his salary.

The petitioner's response also included a copy of the "University of Cincinnati College of Medicine Faculty Guidelines." The "Track Description" section (Part II.B) for full-time "Research Track" positions (including Instructor, Assistant Professor, Associate Professor, and Professor) states: "Faculty in this track shall be appointed or reappointed for a minimum term of one year, not to exceed five years, with the exception of those individuals appointed for the term of a grant or contract."

The "Reappointment" section (Part II.B(2)) states:

Reappointment or promotion is based upon the faculty member's salary being fully supported by external sources unless stated otherwise in the letter of appointment or reappointment. . . . Evaluation of productivity is based primarily on the established requirements and expectations of the department as detailed in the individual's letter of appointment and subsequent letters of reappointment and performance evaluations by the departmental director.

The submitted faculty guidelines do not contain any limitation on number of "Research Track" reappointments.

The director denied the petition stating: "As the proffered position is in a track that is limited to five years, it cannot be found to be a permanent research position."

On appeal, the petitioner submits a December 9, 2009 letter from [REDACTED] stating that the beneficiary has been reappointed on a yearly basis since his initial appointment in November 2006 and that the director overlooked the "exception" in the guidelines for "those individuals appointed for the term of a grant or

contract.” The appellate submission includes a list of “Research Track” faculty at the University of Cincinnati, including Research Assistant Professors, whose duration of service was six years or more, with several having worked in Research Track positions since the 1980s.

Nothing in the university’s faculty guidelines indicates that Research Track faculty cannot be reappointed indefinitely, only that the terms themselves are limited in duration. As the record identifies several Research Track faculty members whose positions were of indefinite or unlimited duration and does not include evidence that the number of reappointments is limited, it is reasonable to conclude that the beneficiary’s research position is permanent as defined at 8 C.F.R. § 204.5(i)(2).

In promulgating the final regulation, the Immigration and Naturalization Service, now United States Citizenship and Immigration Services, recognized that it is unusual for colleges and universities to place researchers in tenured or tenure-track positions. Thus, the commentary to the final rule accepts that research positions “*having no fixed term* and in which the employee will *ordinarily* have an *expectation of permanent employment*” are comparable. (Emphasis added.) 56 Fed. Reg. 60897, 60899 (November 29, 1991).

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.

ORDER: The appeal is sustained and the petition is approved.