

identifying data deleted to
prevent disclosure of unwarranted
invasion of personal privacy
PUBLIC COPY



U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



B3

DATE: APR 06 2012

Office: NEBRASKA SERVICE CENTER

FILE: 

IN RE:

Petitioner:

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:



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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

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 dismissed.

The petitioner is an institution of higher education/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 seeks to employ the beneficiary in the United States as a postdoctoral research associate. The director determined that the beneficiary's current position, and the position identified on the I-140, is a fixed term position with no possibility of permanent appointment. The director stated that the position offered at the time of filing does not qualify under 203(b)(1)(B).

On appeal, counsel asserts that he will submit a brief and/or additional evidence within 30 days. The record reflects that no brief and/or additional evidence was received. For the reasons discussed below, the AAO acknowledges that the petitioner is a university and, thus, need not document accomplishments in an academic field as required for non-university private employers. The AAO does concur with the director, however, that the petitioner has not established that the position offered at the time of filing qualifies under 203(b)(1)(B).

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 record contains an original offer of employment letter, dated February 8, 2005. The petitioner offered the beneficiary a position as a Postdoctoral Scholar. The letter was signed by the beneficiary on March 1, 2005.

The record contains a letter, dated June 24, 2010, stating that the beneficiary is being offered a permanent, fulltime appointment as a Postdoctoral Research Associate and the petitioner's intention to continue to offer the position after September 2012.

The record contains a third letter, dated September 23, 2010, stating that the beneficiary is currently employed in a permanent, fulltime position as a Research Associate (internal laboratory title Postdoctoral Fellow), the petitioner's desire to promote the beneficiary to the position of Senior Research Associate after his immigration status has been "settled".

The record reflects that the I-140 petition, Part 6, Section 1, indicates that the job title the beneficiary is being hired for is "Postdoctoral Research Associate". In addition, the employment letters dated February 8, 2005 and June 24, 2010 indicate the beneficiary is employed as a Postdoctoral Scholar and Research Associate (internally known as a Postdoctoral Fellow).

The record contains a copy of the petitioner's personnel manual stating, "Postdoctoral appointments may not exceed a total of five years for all combined years of institutional training." The manual continues, "An exception to the maximum of five total years for a postdoctoral appointment will be permitted without special approvals, allowing postdoctoral scholars to remain in that status through a sixth year of appointment, not to go beyond September 30, 2011."

Based on the submitted evidence, the beneficiary's current position, and the position identified on the I-140, is a fixed term position with no possibility of permanent appointment. The AAO affirms the director's decision finding that the position offered at the time of filing does not qualify under 203(b)(1)(B).

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 not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.