



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF C-S-C- LLC

DATE: SEPT. 22, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a software and education firm, seeks to classify the Beneficiary as an outstanding researcher. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(B), 8 U.S.C. § 1153(b)(1)(B). This first preference classification makes immigrant visas available to foreign nationals who can demonstrate international recognition as outstanding in their academic field.

The Director of the Nebraska Service Center denied the petition. The Director concluded that the Petitioner did not establish that it employs at least three full-time researchers as required.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and maintains that the Director erred by not including its chief technical officer or the Beneficiary as a full-time researcher.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The statute requires that beneficiaries under this immigrant visa classification should stand apart in their academic area through eminence and distinction based on international recognition. A petitioner can establish a professor or researcher's eligibility through providing initial qualifying documentation for at least two of six categories of specific objective evidence. 8 C.F.R. § 204.5(i)(3)(i). A beneficiary who meets the antecedent requirements must also be recognized internationally within the academic field as outstanding.¹

¹ The submission of evidence relating to at least two criteria does not, in and of itself, establish eligibility for this classification. *See Matter of Chawathe*, 25 I&N Dec. at 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that U.S. Citizenship and Immigration Services (USCIS) examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true."); *see also Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination).

(b)(6)

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Section 203(b)(1)(B) of the Act states that qualifying foreign nationals are those recognized internationally as outstanding in a specific academic area with three years of teaching or research experience who, according to subparagraph (iii), seek 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 implementing regulation at 8 C.F.R. § 204.5(i)(3) similarly requires:

- (iii) 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.

II. ANALYSIS

The Petitioner employs the Beneficiary as a speech recognition engineer. The Director concluded that the Petitioner had seven employees, only two of which, in addition to the Beneficiary, were engaged in full-time research. Specifically, the Director found that the chairman, president and chief executive officer (CEO), vice president, and chief technical officer (CTO), were not engaged in full-time research. On appeal, the Petitioner contends that the CTO, [REDACTED] is engaged in full-time research and that the Director erred in not considering the Beneficiary as one of its full-time researchers.

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The Petitioner presented a chart with the duties of all employees in response to a request for additional evidence from the Director. The exhibit lists [REDACTED] duties as creating, overseeing, and executing product and patent strategy; creating and maintaining system architecture; researching, creating, maintaining, publishing, and patenting intelligent tutoring algorithms and associated code base; management of technical staff; and providing technical pre- and post- sales support.

On appeal, [REDACTED] the Petitioner's president and CEO, maintains that [REDACTED] "spends only five (5) hours per week on his management duties" and his remaining time is dedicated to research and development activities relating to patent-pending algorithms and associated code base. The chart, however, reveals prominent management duties, such as creating, overseeing, and executing product and patent strategy and management of technical staff. The Petitioner must resolve any inconsistency with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). The Petitioner does not resolve the discrepancies or corroborate [REDACTED] statements regarding [REDACTED] research with, for example, patent applications listing him as an inventor or recent research articles listing him as an author. Accordingly, the Petitioner has not established that [REDACTED] is a full-time researcher.

As the record does not demonstrate that [REDACTED] is a full-time researcher, the Petitioner employs only two workers in that role other than the Beneficiary. There is no regulatory or statutory support for the position that a company too small to petition for a researcher who is still overseas can, nevertheless, petition for that same individual if he or she is already in the United States as a nonimmigrant. Therefore, we find that the Beneficiary should not be counted as one of the three persons involved in full-time in research activities. For the above reasons, the Petitioner has not established that it employs three full-time researchers for the purpose of establishing its eligibility as a qualifying employer.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons. It is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of C-S-C- LLC*, ID# 127126 (AAO Sept. 22, 2016)