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U.S. Department of Justice

Immigration and Naturalization Service

Identifying case related to
Federal Circuit Immigration
Division of Personal Privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: [Redacted]

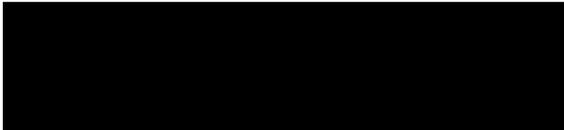
Office: Nebraska Service Center

Date: APR 29 2002

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition: Immigrant Petition for Alien Worker as an 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)

IN BEHALF OF PETITIONER:



PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

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 Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a college that seeks to classify the beneficiary as an outstanding professor pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(B). The director determined that the petitioner had not established that it has offered the beneficiary a tenured or tenure-track position as the statute and regulations require.

Section 203(b)(1)(B)(iii)(I) of the Act states that an alien seeking classification as an outstanding professor must seek to enter the United States “for a tenured position (or tenure-track position) within a university or institution of higher education.” Service regulations at 8 C.F.R. 204.5(i)(3)(iii)(A) mirror this requirement in similar language, requiring “a letter from . . . 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.”

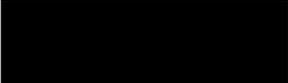
The only issue raised in the director’s decision is whether the position offered to the beneficiary qualifies as a tenured or tenure-track teaching position. The petitioner had initially filed a petition in August 2000, indicating that the beneficiary “will be offered an extended continuing contractual position.” The phrase “extended continuing contractual position” appears more than once in this initial letter; the words “tenure” and “tenure-track” do not appear, and the petitioner does not explain the nature of the extended continuing contract.

On November 30, 2000, the director instructed the petitioner to submit “a copy of the petitioner’s job offer to the beneficiary and evidence that the ‘extended continuing contractual position’ is permanent.” The director informed the petitioner that any response was due no later than February 22, 2001. That deadline elapsed, and the petitioner, through counsel, withdrew its petition and filed a new petition on February 27, 2001. It is the February 27, 2001 petition that is under consideration here; we mention the earlier filing for the sake of continuity and context.

With the new filing, the petitioner submitted the documents that had initially been meant for submission in response to the director’s December 2000 request for evidence. Included with this filing was a job offer letter dated December 14, 2000, in which the petitioner stated “[t]his will be an extended continuing contractual position. During an extended contract you have security of employment. Your employment may only be terminated for just cause or reasons of financial exigency.”

The director denied the petition, stating that the petitioner has not shown that the “extended contractual continuing position” is in fact permanent, despite specific instructions to provide evidence to that effect. The director noted, in the denial notice, that “[t]he petitioner has elected not to provide a copy of the employment contract.”

On appeal, counsel partially quotes the definition of “tenure” from [REDACTED] “tenure is frequently guaranteed by contract for teachers and professors in private educational



institutions. In these situations, the standard clause provides for termination of tenured faculty only for adequate cause or in extraordinary circumstances, in case of demonstrably or bona fide financial exigency.” Counsel states that “the language found in the offer of employment is virtually identical to that which is found in the definition of tenure.”

The job offer letter does in fact state that the petitioner’s “employment may only be terminated for just cause or reasons of financial exigency,” and to this extent it mirrors the partial definition cited by counsel. The letter, however, does not state that this state of affairs is permanent or indefinite. Rather, the letter states that the above conditions apply “[d]uring an extended contract.” This phrase applies a limitation, and implies that the petitioner is subject to dismissal without cause after the expiration of the contract.

Counsel provides several other definitions of tenure, including a listing from www.encyclopedia.com, with a highlighted portion indicating that tenure is “a guarantee of the permanence of a college or university teacher’s position.” In dispute here is not the definition of “tenure,” but whether the petitioner’s employment of the beneficiary fits that definition. In this proceeding, the job offer letter never once uses the word “tenure,” nor does it state that the beneficiary’s employment is “permanent,” which (according to the definition immediately above) is fundamental to the nature of tenure.

With regard to the director’s observation that the petitioner has not submitted a copy of the contract, counsel argues on appeal that the regulation “only requires that the employment offer be in letter form and offer the alien a tenure or tenure-track teaching position.” Given the job offer letter’s avoidance of the terms “tenure,” “tenure-track,” and “permanent,” referring instead to “an extended contract,” it is not unreasonable for the director to note the petitioner’s failure to submit a copy of the contract. If the contract has a fixed expiration date, then the petitioner has not offered the beneficiary permanent or tenured employment, but rather temporary employment. The hypothetical possibility that the contract could be renewed at a later date does not make the job permanent, unless the contract has no expiration date or else contains a guarantee that the contract will definitely be renewed unless allowed to expire for just cause or reasons of financial exigency. The wording of the regulation, indicating that a job offer letter will suffice, does not relieve the petitioner of its burden of proof if that very job offer letter raises questions about the permanence of the job offer.

In this instance, the director has repeatedly advised the petitioner that an “extended contract” does not establish that the petitioner has offered the beneficiary a tenured or tenure-track position. Counsel’s efforts on appeal to conform the petitioner’s vague language to a partial definition of the word “tenure” cannot suffice to establish that the petitioner intends, and has intended since the filing date, to employ the petitioner in a tenured or tenure-track position. Throughout this proceeding, the petitioner appears to have carefully avoided the use of the terms “tenure,” “tenure-track,” and “permanent” when describing the terms of the beneficiary’s employment, and conspicuously absent from the appeal documentation is any further clarification from the petitioner itself.

The petitioner has not met its statutory and regulatory obligation to submit evidence that it has offered the beneficiary a tenured or tenure-track position. Therefore, the petitioner has not established a qualifying job offer pursuant to section 203(b)(1)(B)(iii)(I) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.