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U.S. Department of Homeland Security

Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

ADMINISTRATIVE APPEALS OFFICE
AAO, CIS, 20 Mass. 3/F
425 Eye Street N.W.
Washington, D.C. 20536

OCT 8 - 2003

File: [redacted] (LIN-03-044-50815) Office: Nebraska Service Center Date:

IN RE: Petitioner:
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)

ON BEHALF OF PETITIONER:

[redacted]

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 Citizenship and Immigration Services (CIS) 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.

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 Administrative Appeals Office on appeal. The appeal will be dismissed.

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). The petitioner seeks to employ the beneficiary permanently in the United States as an associate professor - research. The director determined that the petitioner had not established that it had offered the beneficiary a permanent job.

On appeal, counsel argues that the job offer is a permanent one.

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.

8 C.F.R. 204.5(i)(3)(iii) provides that the initial evidence for this classification includes:

> 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

(Emphasis added.) 8 C.F.R. §204.5(i)(2) states:

> *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.

Initially, the petitioner failed to submit evidence of its job offer to the beneficiary. In response to the director's request for additional documentation, the petitioner submitted two job offer letters. The beneficiary signed the first letter on July 17, 2000. The letter states: "The term of the renewal will be for the period August 20, 2000 through May 19, 2002." The beneficiary signed the second letter on September 18, 2002. It states: "The term of the renewal will be for the period March 12, 2003 through March 11, 2004." Both letters provide that the offer "carries no presumption of renewal or continuing tenure."

In an accompanying letter, Dr. Ralph Kummler, interim Dean of the College of Engineering, asserts that tenure-track positions are also renewable.

The director concluded that the job offer was not for a permanent job. On appeal, counsel argues that the beneficiary ordinarily has an expectation of continued employment. Counsel notes that the petitioner does not offer positions of unlimited duration prior to tenure, that the terms and conditions of the beneficiary's job are similar to the terms of tenure-track positions, and that under the director's analysis, the petitioner could never petition under this classification.

The regulations define CIS's interpretation of the statutory requirement that research positions be "comparable" to tenure track positions. We are bound by those regulations. The regulatory definition of "permanent" not only requires an expectation of continued employment, but the term of employment must be of "indefinite or unlimited duration." The petitioner's contract is clearly and unambiguously a term contract. Under no reading of the job offer can we conclude that the petitioner's position is of "indefinite or unlimited duration."

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.