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U.S. Citizenship and Immigration Services

[redacted]

FEB 06 2004

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary:

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]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Mari Johnson
for 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 described as a "medical care, education [and] research] facility. It seeks to classify the beneficiary as an outstanding professor or 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; materials in the record vary as to the exact job title. The director determined that the petitioner had not established that it had extended a qualifying job offer to the beneficiary.

Section 203(b) of the Act states, in pertinent part:

> (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.

Citizenship and Immigration Services (CIS) regulations at 8 C.F.R. § 204.5(i)(3) state that a petition for an outstanding professor or researcher must be accompanied by:

> (i) Evidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition . . . ;
>
> (ii) Evidence that the alien has at least three years of experience in teaching and/or research in the academic field. Experience in teaching or research while working on an advanced degree will only be acceptable if the alien has acquired the degree, and if the teaching duties were such that he or she had full responsibility for the class taught or if the research conducted toward the degree has been recognized within the academic field as outstanding. Evidence of teaching

and/or research experience shall be in the form of letter(s) from former or current employer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien; and

(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.

On the I-140 petition form, the petitioner lists the beneficiary's job title as "senior instructor/researcher," and describes the job duties as "teach, conduct research regarding traditional Chinese medicine." Counsel states that the petitioner "has offered [the beneficiary] a full-time faculty position as Senior Instructor in the Department of Classical Chinese Medicine at the College. It is a regular research and teaching position having no fixed term in which [the beneficiary] may have an expectation of permanent employment. He will perform basic research and teaching. . . . See College offer letter, attached as **Exhibit C**."

Exhibit C is a job offer letter by [redacted] chair of the petitioner's Department of Classical Chinese Medicine. The body of Dr. Fruehauf's letter reads, in full:

> I am delighted to extend to you a position as a faculty member with our Department of Classical Chinese Medicine at the [petitioning institution]. The title of the position is "Qigong Therapy Instructor," and compensation will start at $32,600+ (which includes a base salary of $24,000 plus renumeration [sic] from specialty workshops organized by the College). This is a regular position having no fixed terms. Please note that your anticipated income from these workshops will increase your total compensation.

This letter fails to corroborate several of counsel's claims. There is no mention of "an expectation of permanent employment." Pursuant to 8 C.F.R. §§ 204.5(i)(3)(iii)(A) and (B), the petitioner's job offer letter must offer the beneficiary "a tenured or tenure-track teaching position" or "a permanent research position." Dr. Fruehauf's vague reference to "a regular position having no fixed terms" does not meet these requirements. Also, Dr. Fruehauf calls the petitioner an "instructor" and refers repeatedly to "specialty workshops," but never mentions research. There is, therefore, no support for counsel's claim that the position involves both "research and teaching."

An interview with the beneficiary appeared in the Summer 2002 issue of the *Journal of Contemporary Daoism*. The interviewer asked the beneficiary to "tell us about your work" at the petitioning institution. The beneficiary replied, "I teach qigong, taiji, and other martial arts like Xinyi and Bagua to students, staff, and people from the community. I also see patients in the college clinic." The beneficiary then describes, at length, his work with patients, but he never mentions research.

On December 18, 2002, the director issued a request for evidence, which included the following passage:

> You wrote that you have "offered the Beneficiary a full-time research position." However, your [job offer] letter to the beneficiary made no mention of research. Therefore, please submit a copy of your letter offering the alien a **tenured or tenure-track** teaching position or a permanent research position in his academic field. Please indicate clearly whether you are offering him a teaching position or a research position.

In response, counsel states "[p]lease see attached as **Exhibit A**, the [petitioner's] offer letter to the beneficiary. . . . The position is a full-time regular position as a Qigong Therapy Instructor. . . . It is a regular research position having no fixed term in which [the beneficiary] may have an expectation of permanent employment and requires both teaching and research in the beneficiary's field of Qigong."

Exhibit A of the petitioner's response is a new job offer letter from Heiner Fruehauf. The first paragraph of this letter repeats, verbatim, most of the original job offer letter. The second paragraph of the new letter reads:

> The position requires both teaching and research in the field of Qigong. Please note that the College presently does not have a tenure-track system in place for its faculty members, but the position is a regular position having no fixed terms. Excluding unexpected circumstances, this position is regarded as permanent.

The amended job offer letter is dated January 25, 2003, a month after the director's request for evidence. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. *See Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998), and *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), which require that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. In this instance, the petitioner has inserted a reference to "research" into its amended job offer letter. This cannot suffice to demonstrate that the petitioner's duties have consistently involved a significant amount of research, because it is not consistent with the evidence submitted with the initial petition.

The director denied the petition, stating that the petitioner has failed to "establish that it has offered the beneficiary a research position. . . . The petitioner's attempt to characterize the position as a research position is unsupported by the evidence. . . . [T] he evidence indicates that the research which the petitioner expects the beneficiary to perform, if any, would be incidental to the teaching responsibilities of the offered position." The director cited several exhibits from the record that consistently refer to the beneficiary as a "teacher" or "instructor," "but there is no similar description of him as a researcher."

The director concluded that the petitioner's primary duties involve teaching rather than research, in which case the regulations require an offer of tenured or tenure-track employment. The director observed that the petitioner cannot offer the petitioner a tenured or tenure-track teaching position because it "does not have a tenure-track system in place."

On appeal, counsel acknowledges "[t]he Service is correct in stating that the beneficiary's position is primarily teaching as opposed to research. However, it is incorrect in stating that the position is not tenured or tenure-track. The College has offered [the beneficiary] what it considers to be a tenure-track teaching position. Please see the attached offer letter."

The letter in question, dated July 1, 2003 and signed by consists mostly of language from the initial job offer letter, with one added sentence: "We consider this to be a tenure-track position at our College." fails to offer any explanation or evidence to reconcile this statement with his earlier assertion that "the College presently does not have a tenure-track system in place."

The initial job offer letter made no mention of tenure or research. The second job offer letter mentioned research, and stated that there is no tenure system at the petitioning school. The most recent letter removes all references to research and inserts a reference to "a tenure-track position." *Matter of Izummi, supra*, clearly applies here; the petitioner has repeatedly modified the job offer, after the fact, in an effort to conform to CIS requirements. Furthermore, the conflicting information in these letters necessarily raises questions of credibility. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988).

For the above reasons, we concur with the director's findings that (1) the beneficiary's position primarily involves teaching rather than research, and (2) the position offered to the beneficiary at the time of filing was neither tenured nor tenure-track. Any subsequent revision of the petitioner's personnel policies cannot overcome this finding. The evidence does not establish that the petitioner had extended a qualifying job offer to the beneficiary, and therefore the petition cannot be approved.

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.