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FEB 24 2004

FILE:

[Redacted]

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]

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

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 in the United States as a research associate. The director determined that the petitioner had not established that it had offered the beneficiary a qualifying, permanent position.

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.

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 . . . ; 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.

Pursuant to regulations at 8 C.F.R. § 204.5(i)(2), "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.

The Form I-140 petition, dated September 4, 2002 and filed on October 15, 2002, indicates that the position offered to the beneficiary pays \$615.39 per week, which annualizes to \$32,000.28 per year. Dr. [REDACTED] associate professor of Surgery at the petitioning university, states that the petitioner has offered the beneficiary "a full-time permanent position for \$32,000 per year."

The regulation at 8 C.F.R. § 204.5(i)(3)(iii)(B) requires that evidence of a job offer must be in the form of a letter from a United States university or institution of higher learning offering the alien a permanent research position in the alien's academic field. A letter to immigration authorities, describing the position, is not a letter offering the alien the position. The voluminous documentation submitted with the initial position does not include any actual job offer letter, nor any other documentation signed by both the beneficiary and an authorized official of the petitioning university, specifying the terms of employment and officially establishing the employer/employee relationship.

On January 9, 2003, the director instructed the petitioner to "submit a letter offering the alien . . . a permanent offer of employment." In response, the petitioner has submitted two letters, both dated January 20, 2003, neither of which is addressed to the beneficiary. Dr. [REDACTED] states that the petitioner "has offered a permanent full-time position to [the beneficiary]. His current position is Research Fellow. We will promote him [to] Research Associate once his Green Card is approved. He is compensated at \$32,000 per year with standard employee benefits. . . . We intend to continue to employ [the beneficiary] in the future." Professor [REDACTED] head of the petitioner's Section of General Surgery, states:

[The beneficiary] has been offered a permanent full-time staff position as Research Associate I in the Section of General Surgery, Department of Surgery. . . . [The beneficiary's] annual salary will be \$32,000 plus fringe benefits, including health insurance.

Most research and teaching positions at the [petitioning university] are reviewed and renewed on an annual basis. Renewal each year is contingent upon satisfactory performance of duties and availability of research funds. [The beneficiary's] appointment will be an open-ended position. It is expected that [the beneficiary's] appointment will be renewed indefinitely on an annual basis, provided he continues to perform his duties satisfactorily and provided research funding continues at the expected level.

Neither of the above letters qualifies as "a letter offering the alien" employment. Rather, they are letters to a third party (the director) describing the claimed terms of the job offer. Thus, the petitioner failed to submit a job offer letter with the petition, and failed again to submit such a letter after the director specifically instructed the petitioner to submit it.

The director denied the petition, noting that, according to Prof. [REDACTED] the beneficiary's appointment is not permanent, but rather is subject to annual renewal. The petitioner filed a motion to reopen and submitted two new letters. One new letter is addressed to the director, and is signed by Prof. [REDACTED] and Professor [REDACTED] chair of the petitioner's Department of Surgery. This letter, dated April 14, 2003, states "this offered position is for a term of indefinite [sic] in which we normally have the expectation of continued employment." Profs. [REDACTED] and [REDACTED] state that the position will pay "\$33,500 per year with standard employee benefits." All previous submissions, including the Form I-140 itself and at least three other documents, stated the salary as \$32,000 per year. The other letter is dated September 2, 2002, six weeks before the filing date, and addressed to the beneficiary. The letter is in the form of a job offer letter from Dr. [REDACTED] and Prof. [REDACTED] signed by the beneficiary to indicate acceptance of the offer. The letter states "[t]his position is a full-time permanent position, which you can expect to be continued for indefinite period. Your salary will be \$33,500 per 12-month year."

The director reopened the petition and affirmed the previous denial, noting that the petitioner has not addressed Prof. [REDACTED] statement that the position is subject to annual renewal. The petitioner has appealed this decision. Counsel argues that the petitioner's earlier motion included "two additional documents from the petitioner, which reiterated clearly and unambiguously that the position is a full-time permanent position."

The beneficiary, in a non-notarized affidavit, refers to both of the letters that had accompanied the petitioner's motion:

Before I accepted this job, my mentor, Dr. [REDACTED] clearly indicated to me that my position shall be a long term of indefinite or unlimited duration and I had no reason not to believe it. Please see the attached employment letter dated September 2, 2002 issued by my employer.

I am continuously assured by my employer, verbally and in writing (please see the letter dated April 14, 2003) that my research position shall be a long term of indefinite or unlimited duration.

With regard to these two letters, we note that both the new April 14, 2003 letter and the job offer letter dated September 2, 2002 both state the annual salary as \$33,500. They are the only documents in the record to state the annual salary as \$33,500. Every prior submission, from the petition form itself to letters dated several months later, in January 2003, consistently states the salary as \$32,000 per year (or, in the case of the Form I-140, its weekly equivalent). Furthermore, the director had previously instructed the petitioner to submit the job offer letter, and the petitioner had not done so. Given these irregularities, the evidence is consistent with the finding that the job offer letter was actually executed in the spring of 2003, and backdated September 2, 2002 in order to appear to predate the October 2002 filing date. 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).

On appeal, as with the previous motion, neither counsel nor the petitioner offers any explanation for Prof. [REDACTED] plainly-worded assertion that the position is subject to annual renewal (and thus represents a succession of short-term appointments). The director has repeatedly cited this as a central ground for denial, and yet the petitioner has never directly responded to this point despite numerous opportunities to do so. The petitioner has simply insisted that the position is permanent and of indefinite duration, making no reference at all to Prof. [REDACTED] statement. For reasons explained above, the purported job offer letter raises more questions than it answers, and raises questions of credibility that are compounded by Prof. [REDACTED] inconsistent statements as to the nature of the position offered to the beneficiary.

The above finding is sufficient to warrant dismissal of the appeal. Review of the record raises another issue, concerning the beneficiary's eligibility for classification as an outstanding researcher. Regulations at 8 C.F.R. § 204.5(i)(3)(i) require evidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition. The petitioner must submit evidence to fulfill at least two of six listed criteria. The director stated that "[t]he record appears to indicate that the beneficiary meets at least two of the six criteri[a]" (the director did not specify which two), but review of the record does not support this finding. The petitioner claims to have fulfilled the following criteria:

Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field.

The petitioner asserts that the beneficiary received several qualifying awards in China, including an Outstanding Paper Award from the Chinese Pharmacological Society in 1997, and Scientific and Technological Progress Awards from the government of Gansu Province and the Rear-Service Department of China's military. The petitioner has not established that any of these awards qualify as major prizes or awards, at a level garnering international recognition. At least one of the awards appears to be a provincial-level award, and the other two awards do not appear to be internationally recognized as major awards.

The petitioner also notes that the beneficiary was a principal investigator at the Beijing Institute of Basic Medical Science, as well as the principal investigator on research supported by a National Natural Science Grant. The petitioner does not explain how serving as a principal investigator qualifies as a prize or award for outstanding achievement in the academic field.

While the beneficiary has won some lesser awards of limited scope, the petitioner has not established that the beneficiary has received any major prize or award for outstanding achievement in the academic field.

Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members.

The petitioner cites the beneficiary's membership in three associations, specifically Sigma Xi, the North American Association for the Study of Obesity and the Chinese Pharmacological Society. The record contains no information about the membership requirements of the Chinese Pharmacological Society or the North American Association for the Study of Obesity. Documents in the record show that membership in Sigma Xi requires "noteworthy achievement," defined as "publication, patents, written reports or a thesis or dissertation." Sigma Xi claims "nearly 75,000" members, a substantial size which does not readily suggest highly exclusive membership requirements or indicate that "noteworthy" is synonymous with "outstanding." The petitioner has not shown that any of the above associations require outstanding achievements of its members.

Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field.

The petitioner observes that the beneficiary has acted as a reviewer for the *Journal of Shanxi Chinese Medicine Research* and the *Journal of Northwest Normal University*. These two journals are both based in the same general region of China where the beneficiary studied and worked prior to his entry into the United States, and thus they do not demonstrate an international base of recognition. Also, the petitioner has not established that peer review of journal manuscripts represents a privilege limited to the elite, rather than a duty commonly expected of established and active researchers.

Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.

The petitioner indicates that the beneficiary "has published over 15 papers in the reputed international journals and international conferences." The petitioner submits documentation showing that two of the journals to carry the beneficiary's articles are among "The 25 Most-Cited Journals" as ranked by the Institute for Scientific Information (ISI). Clearly, the petitioner is aware of the importance of citations as a means for gauging the impact of published research. The petitioner submits bibliographical materials from ISI's web site, demonstrating the petitioner's access to that site. Nevertheless, while ISI's web site offers citation information, the petitioner submits nothing from that site (or from any other source) to establish that the beneficiary's articles have been cited frequently, or at all.

The above brief discussion demonstrates that the petitioner's evidence does not unequivocally establish that the beneficiary has earned international recognition as an outstanding researcher. This finding further supports the dismissal of the appeal, an outcome already fully justified by the director's determination regarding the nature of the position offered to the beneficiary.

The record does not establish that it has offered the beneficiary a permanent position rather than an annually renewable, short term position more typical of postdoctoral positions. Therefore, the petitioner has not established that it has offered the beneficiary a qualifying, permanent position. The petitioner has also not established that the beneficiary has been recognized internationally as outstanding in his academic field; the beneficiary's recognition appears to be largely confined to sections of China. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

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.