



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

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

MATTER OF C-P- LLC

DATE: AUG. 21, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a lithium-ion battery materials and design entity, 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 area.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner had the ability to pay the Beneficiary's proffered wage. Specifically, it had not provided one of the forms of evidence identified at 8 C.F.R. § 204.5(g)(2).

On appeal, the Petitioner submits audited financial statements as well as additional pay stubs for the Beneficiary and asserts that it has met its burden of proof.

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

I. LAW

The Act 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. A beneficiary who meets the antecedent requirements must also be recognized internationally within the academic field as outstanding.

Specifically, section 203(b)(1)(B)(i) of the Act provides that a foreign national is an outstanding professor or researcher 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.

Finally, in support of its petition, the employer must corroborate that it has the ability to pay the beneficiary the proffered wage, and must demonstrate this ability from the priority date, which, in this case, is the date it filed the petition, until the beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(d), (g)(2); *see also* 8 C.F.R. § 103.2(b)(1). The regulation provides that evidence of ability to pay must be “in the form of copies of annual reports, federal tax returns, or audited financial statements.” 8 C.F.R. § 204.5(g)(2).

II. ANALYSIS

The Petitioner has offered the Beneficiary a permanent research position as its director of advanced material scale-up and synthesis. The Beneficiary has received nine U.S. patents and one in Europe. He has authored several articles that have garnered over 400 citations in the aggregate, with one receiving over 100 citations. He has served as an external reviewer of Master and Ph.D. degree theses at the [REDACTED] France. As an example of his past projects, [REDACTED] chair for physical chemistry at the [REDACTED] explains that while working for [REDACTED] a pharmaceutical company, the Beneficiary created and directed a project team to set up a “state-of-the-art lab for organic electronics/photovoltaics,” a new field for [REDACTED]. The team accomplished this goal in two years and, in collaboration with [REDACTED] group, “achieved world-leading solar cell efficiencies in the field of hybrid photovoltaics.” The Petitioner has therefore sufficiently established the Beneficiary’s international recognition.

The sole issue on appeal is whether the Petitioner has documented its ability to pay the Beneficiary’s proffered wage, \$150,000. Initially, the Petitioner presented a 2015 Internal Revenue Service Form W-2, Wage and Tax Statement, confirming that it paid the Beneficiary \$154,681.50. Pay stubs for 2016 show him receiving a salary of \$5,769.23 biweekly, which amounts to an annual compensation of approximately \$150,000. Where the Petitioner has submitted the requisite documentation at 8 C.F.R. § 204.5(g)(2), U.S. Citizenship and Immigration Services will examine whether that company may establish its ability to pay the proffered wage based on its employment of the

Beneficiary. *See Matter of Sonegawa*, 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967).¹ The record before the Director, however, did not include copies of the Petitioner's annual reports, federal tax returns, or audited financial statements. Instead, the Petitioner offered the evidence of the Beneficiary's wages discussed above and its financial reports that an accountant had reviewed.

On appeal, the Petitioner overcomes the Director's concerns by submitting audited financial statements. The information on revenues, expenses, and retained earnings relates to the eight months ending August 31, 2016, and, thus, covers the priority date in July 2016. The Petitioner also supplies new pay stubs corroborating that it began paying the Beneficiary \$6,115.38 biweekly in August 2016 and had compensated him more than \$141,000 as of mid-November. Thus, it has both provided the requisite evidence set forth at 8 C.F.R. § 204.5(g)(2) and shown its ability to pay the Beneficiary's proffered wage through actual payments.

III. CONCLUSION

The Petitioner has now submitted the requisite evidence to demonstrate its ability to pay the Beneficiary's proffered wage and, thus, satisfied all eligibility requirements.

ORDER: The appeal is sustained.

Cite as *Matter of C-P- LLC*, ID# 505904 (AAO Aug. 21, 2017)

¹ *See also* Memorandum from William Yates, Associate Director for Operations, USCIS, HQOPRD 90/16.45, *Determination of Ability to Pay under 8 CFR 204.5(g)(2) 2-3* (May 4, 2004), <https://www.uscis.gov/laws/policy-memoranda>.