



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

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

In Re: 6131906

Date: JUNE 3, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Outstanding Professors/Researchers)

The Petitioner, a biotechnology company, seeks to classify the Beneficiary as an outstanding professor or researcher in the field of chemistry. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(B), 8 U.S.C. § 1153(b)(1)(B).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had not provided documentation of its ability to pay the proffered wages of this petition and others it has filed.

On appeal, the Petitioner submits additional evidence and a brief asserting that it has sufficient ability to pay the combined proffered wages of this petition and others.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will remand the matter to the Director for further action and consideration.

**I. LAW**

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 [for a qualifying position with a university, institution of higher education, or certain private employers].

To establish a professor or researcher's eligibility, a petitioner must provide initial qualifying documentation that meets at least two of six categories of specific objective evidence set forth at 8 C.F.R § 204.5(i)(3)(i)(A)-(F). This, however, is only the first step, and the successful submission of

evidence meeting at least two criteria does not, in and of itself, establish eligibility for this classification.<sup>1</sup> When a petitioner submits sufficient evidence at the first step, USCIS will then conduct a final merits determination to decide whether the evidence in its totality shows that the beneficiary is recognized as outstanding in his or her academic field. 8 C.F.R. § 204.5(i)(3)(i). In addition, the regulation at 8 C.F.R. § 204.5(i)(3)(ii) provides that a petition for an outstanding professor or researcher must be accompanied evidence that the foreign national has at least three years of experience in teaching and/or research in the academic field.

Furthermore, the regulation at 8 C.F.R. § 204.5(g)(2) states, in part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. . . . In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by the Service.

## II. ANALYSIS

In denying the petition, the Director concluded that the Petitioner had not established its ability to pay the Beneficiary's proffered wage of \$60,000 per year. The Director also indicated that the Petitioner had not presented sufficient information relating to its ability to pay the beneficiaries of other petitions it has filed.

The priority date for this petition is November 13, 2018. In determining a petitioner's ability to pay, we examine whether it paid the beneficiary the full proffered wage at the time the priority date was established and onward. A petitioner's submission of documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage for the time period in question, when accompanied by a form of evidence required in the regulation at 8 C.F.R. § 204.5(g)(2), may be considered proof of the petitioner's ability to pay the proffered wage. Here, the record includes audited financial statements, which satisfy the regulation, as well as earnings statements indicating that the Petitioner has paid the Beneficiary \$5,000 per month beginning in July 2018 and continuing until March 2019 when the Petitioner filed its appeal.<sup>2</sup> This evidence shows that the Petitioner has employed the Beneficiary and paid him the proffered wage.

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<sup>1</sup> USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of outstanding professors and researchers. See USCIS Policy Memorandum PM-602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 20* (Dec. 22, 2010), <https://www.uscis.gov/legal-resources/policy-memoranda>.

<sup>2</sup> The record includes the Beneficiary's 2018 Form W-2, Wage and Tax Statement, showing earnings of \$57,130. While this amount falls short of the proffered wage of \$60,000 per year, the Petitioner provided documentation indicating that it increased the Beneficiary's salary to \$5,000 per month beginning in July 2018 (four months before the petition's priority date). In addition, the Petitioner provided its audited financial statements and bank account records as further evidence of its ability to pay the proffered wage.

We conclude that the preponderance of the evidence favors the Petitioner's ability to pay the proffered wage of this petition. Because the Petitioner has established that it has been paying the Beneficiary at a rate equal to the proffered wage, as well as provided audited financial statements and other corroborating evidence of its ability to pay its remaining staff, we decline to consider its ability to pay the beneficiaries of other petitions it has filed.

Regarding whether the Beneficiary satisfies at least two of the regulatory criteria at 8 C.F.R § 204.5(i)(3)(i)(A)-(F), the Director did not render a determination on this issue. We are therefore remanding for the Director to consider whether the Petitioner has met its burden of proof with respect to the Beneficiary meeting two of the aforementioned regulatory criteria. Furthermore, if the Director determines that the Beneficiary satisfies the initial evidence requirements of at least two criteria, he should then consider the totality of the material provided in a final merits determination and assess whether the record shows the Beneficiary is internationally recognized as an outstanding professor or researcher in his academic field.

### III. CONCLUSION

The Director's decision that the Petitioner has not met the requirements of the regulation at 8 C.F.R. § 204.5(g)(2) is withdrawn. We are remanding the petition for the Director to determine if the Petitioner has demonstrated that the Beneficiary fulfills at least two of the regulatory criteria at 8 C.F.R § 204.5(i)(3)(i)(A)-(F) and, if so, to evaluate whether he is recognized internationally as outstanding in his academic field.

**ORDER:** The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision which, if adverse, shall be certified to us for review.