



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

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

In Re: 30296271

Date: MAR. 5, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a nonprofit research and education institution, seeks to classify the Beneficiary, a bioinformatics research scientist, as an outstanding professor or researcher. *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 established its ability to pay the proffered wage. The matter is now before us on appeal.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will withdraw the Director's decision and remand the matter for entry of a new decision.

## I. LAW

Section 203(b)(1)(B) of the Act provides that an individual is an outstanding professor or researcher if the person is recognized internationally as outstanding in a specific academic area, has at least three years of experience in teaching or research in the academic area, and seeks to enter the United States for a qualifying position with a university, an 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. When a petitioner submits sufficient evidence at the first step, we will then conduct a final merits determination to decide whether the evidence in its totality shows that the beneficiary is internationally recognized as outstanding in their academic field. 8 C.F.R. § 204.5(i)(3)(i); *Viswanadha v. Mayorkas*, 660 F. Supp. 3d 759, 770-72 (N.D. Ind. 2023) (concluding that USCIS' two-step analysis is consistent with the regulation at 8 C.F.R. § 204.5(i)(3)); *see also Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (describing the two-step process).<sup>1</sup>

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<sup>1</sup> USCIS has confirmed the applicability of this two-step analysis to evaluate the evidence submitted with the petition to

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

*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 a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. 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 \$65,000 per year. The priority date for this petition is June 20, 2023. 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 relevant time period, 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 Petitioner initially provided earnings statements indicating that it paid the Beneficiary \$2,500.00 biweekly (or \$65,000.00 per year) beginning in January 2023 and continuing until May 2023. With the appeal, the Petitioner presents additional earnings statements for the Beneficiary dated June 2023 through September 2023 showing she continued to receive biweekly pay of \$2,500.00. This evidence demonstrates that the Petitioner has employed the Beneficiary and paid her a rate equal to the proffered wage. In addition, the record includes a statement from a vice president of Petitioner (an employer which employs more than 100 workers) confirming the organization's ability to pay the proffered wage. The Petitioner also submitted its annual reports, audited financial statements, and other corroborating evidence.<sup>2</sup> Accordingly, we conclude that the preponderance of the evidence demonstrates the Petitioner's ability to pay the proffered wage of this petition.

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

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demonstrate an individual's eligibility for classification as an outstanding professor or researcher in their academic field. *See* 6 USCIS Policy Manual, *supra*, at F.3(B).

<sup>2</sup> The record indicates that the Petitioner was founded in 1962 and has been ranked among the top cardiovascular centers in the United States by U.S. News & World Report for more than 30 years. USCIS may consider other factors affecting a petitioner's ability to pay a proffered wage such as the number of years it has conducted business, the growth of its business, its number of employees, the occurrence of any uncharacteristic business expenditures or losses, or its reputation in its industry. *See Matter of Sonogawa*, 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967).

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, the Director 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 her academic field.

### III. CONCLUSION

The Director's decision that the Petitioner has not established its ability to pay the proffered wage 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 she is recognized internationally as outstanding in her academic field.

**ORDER:** The Director's decision is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.