



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

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

In Re: 26081507

Date: MAR. 29, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a university, seeks to classify the Beneficiary 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 did not establish that the Beneficiary was offered a tenured or tenure-track position. 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 the 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:

- (i) the individual is recognized internationally as outstanding in a specific academic area,
- (ii) the individual has at least 3 years of experience in teaching or research in the academic area, and
- (iii) the individual 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. 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.¹ 8 C.F.R. § 204.5(i)(3)(i).

Furthermore, the regulation at 8 C.F.R. § 204.5(i)(3)(iv) indicates that an offer of employment must be submitted 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.

II. ANALYSIS

The Beneficiary received her Ph.D. in Immunology and Infectious Diseases from [REDACTED] University in France in 2010. She began working for the Petitioner in 2011 and has served as an Assistant Professor in the Department of Pediatrics since September 2019.

In an August 2022 letter accompanying the petition, the Petitioner stated that the Beneficiary “has been offered full-time permanent employment . . . in accordance with 8 C.F.R. § 204.5(i)(3)(iv)(C).” This letter explained that the Beneficiary “will continue to provide opportunities for conducting translational research related to HIV. She will perform *in vivo* studies in nonhuman primates, testing innovative HIV cure approaches using oncology drugs modulating cell proliferation for which she has received funding as Principal Investigator (PI) from the NIH.” In addition, a September 2022 letter from the Petitioner’s Human Resources Operations Support Specialist indicated that the Beneficiary’s “offer of employment is intended to be of an indefinite or unlimited duration and that the nature of the position is such that the employee will ordinarily have an expectation of continued employment.”

The Director issued a notice of intent to deny (NOID) stating that the Petitioner’s evidence did “not demonstrate that the Beneficiary was offered a tenured position (or tenure-track position).” The NOID asked the Petitioner to “submit evidence that a qualifying offer of employment exists. The offer of employment shall be in the form of a letter from 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.”²

¹ USCIS has confirmed the applicability of this two-step analysis to evaluate the evidence submitted with the petition to demonstrate an individual’s eligibility for classification as an outstanding professor or researcher in their academic field. See 6 USCIS Policy Manual F.3(B), <https://www.uscis.gov/policy-manual>.

² The Director’s NOID focused on the Beneficiary’s eligibility pursuant section 203(b)(1)(B)(iii)(I) of the Act, but did not afford the Petitioner an opportunity to address her eligibility pursuant to section 203(b)(1)(B)(iii)(II) or (III) of the Act. See also 8 C.F.R. § 204.5(i)(3)(iv)(A)-(C).

In response, the Petitioner provided an October 2022 letter from the Beneficiary's supervisor indicating that her "employment is intended to be permanent with an expectation of continued employment. [The Beneficiary's] role is in academic research, producing scholarly research and in leading *in vivo* studies in nonhuman primates, particularly relevant to Immunology and Infectious Disease."

Additionally, the Petitioner submitted "Guidelines for Appointment, Promotion and Tenure" at its School of Medicine. With respect to "Limited and Continuous Appointments and Faculty Ranks," the guidelines state:

Limited (non-continuous, non-tenured) appointments are granted for a period of time specified in writing to the appointee (usually one year for full-time faculty) and shall be renewed annually unless written notice of non-renewal is provided to the faculty member in accordance with the *Statement* or unless the letter of appointment to the School faculty specifies a terminal employment period of one year or less. Continuous (tenured) appointments may not be terminated, except as described in the *Statement*.

The following ranks are available for appointment or promotion of full-time or part-time faculty. Expected levels of academic accomplishment increase with each rank.

1. Associate and Senior Associate (limited, non-continuous appointments)
2. Instructor (limited, non-continuous appointment)
3. Assistant Professor (limited, non-continuous appointment)
4. Associate Professor (limited or, for faculty who have been granted tenure, continuous)
5. Professor (limited or, for faculty who have been granted tenure, continuous)

In the decision denying the petition, the Director stated that the Petitioner did "not demonstrate that the Beneficiary was offered a tenured position (or a tenure-track position). Therefore, USCIS does not find the Beneficiary has a qualifying offer of employment from the Petitioner."

In the appeal brief, the Petitioner contends that the regulations at 8 C.F.R. § 204.5(i)(3)(iv)(A)-(C) "provide that the offer of employment be in the form of a letter from the petitioning employer (i.e., U.S. university or institution of higher learning or a department, division, or institute of a private employer) stating that the employment is a tenured or tenure-track teaching position or a 'permanent' research position in the alien's academic field." The Petitioner asserts that the Director erred in not considering the documentation showing that the Beneficiary's offer of employment was in "a permanent research position" in accordance with 8 C.F.R. § 204.5(i)(3)(iv)(B) or (C).

We conclude that the preponderance of the evidence shows that the Beneficiary is serving in a research position for the Petitioner. The Director therefore should have considered whether the Beneficiary's job offer was in a "permanent" research position in accordance with either 8 C.F.R. § 204.5(i)(3)(iv)(B) or (C).³ Accordingly, we will remand the matter to the Director for a determination on this issue.

³ A petitioner must submit evidence to establish that the job offer is for a permanent research position. For example, many

The Director should also decide whether the Beneficiary satisfies at least two of the regulatory criteria at 8 C.F.R. § 204.5(i)(3)(i)(A)-(F). If the Director determines that the Petitioner has met its burden of proof with respect to the Beneficiary meeting two of the aforementioned regulatory criteria, he should then consider the totality of the evidence 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 denying the petition is withdrawn. We are remanding the petition for the Director to determine if the Petitioner has met the requirements of either 8 C.F.R. § 204.5(i)(3)(iv)(B) or (C). The Director should also determine whether 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, evaluate whether she is recognized internationally as outstanding in her academic field.

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

research positions are funded by grant money received on a yearly basis. Researchers, therefore, are sometimes employed under employment contracts that are valid in 1-year increments. If the petitioning employer demonstrates, however, the intent to continue to seek funding and a reasonable expectation that funding will continue (such as demonstrated prior renewals for extended long-term research projects), such employment can be considered permanent within the meaning of the regulation. The Director should also consider the circumstances surrounding the job offer as well as the benefits attached to the position. A position that appears to be limited to a specific term can meet the regulatory test if the position normally continues beyond the term (that is, if the funding grants are normally renewed). See 6 USCIS Policy Manual F.3(D)(1), *supra*.