



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

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

In Re: 20177669

Date: MAY 25, 2022

Appeal of Nebraska Service Center Decision

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

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

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Beneficiary’s position for his employer will be in a research capacity. On appeal, the Petitioner asserts that the Director’s “decision is based on an erroneous conclusion of fact with respect to the proposed job duties and should thus be reversed.” 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 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. 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 his or her academic field.<sup>1</sup> 8 C.F.R. § 204.5(i)(3)(i).

Furthermore, the regulation at 8 C.F.R. 204.5(i)(3)(iv) specifies 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 his Ph.D. in chemical engineering from the [REDACTED] [REDACTED] in 2010. He began working for the Petitioner in 2012 and has served as "APC Business Development Manager" since November 2016.

In an April 2020 letter accompanying the petition, the Petitioner stated: "For the position of APC Business Development Manager, we require the services of a foremost researcher in process control to ensure that [the Petitioner] remains an industry leader in commercially marketed industrial controls and automation technologies." The Petitioner further indicated that the Beneficiary's position involves performing research relating to [REDACTED] advanced process controls applications" and "the development of accurate software models of customers' [REDACTED] processes to represent thermodynamic and mass balance properties for use by advanced process control applications." The Petitioner also indicated that the Beneficiary "will be responsible for leading development, sales pursuit management, proposal development, pricing development, risk, assessment, and sales strategies." In addition, the Petitioner explained that the Beneficiary's work involves researching [REDACTED] process piping and vessels to ensure the most accurate measurements and control opportunities for advanced process control applications."

The Director issued a request for evidence (RFE) asking the Petitioner to provide further information to demonstrate that the Beneficiary's APC Business Development Manager position satisfies the requirements of the regulation at 8 C.F.R. 204.5(i)(3)(iv). In response, the Petitioner provided a December 2020 letter stating: "While the APC Business Development Manager performs some managerial duties associated with overseeing collaboration between various teams, the position

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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 demonstrate eligibility for classification as an outstanding professor or researcher. See 6 *USCIS Policy Manual* F.3(B), <https://www.uscis.gov/policy-manual>.

primarily conducts research as a member of [the Petitioner's] [ ] Global Research and Development Organization.” The Petitioner further explained that as a member of the [ ] Ability team, the Beneficiary’s work “focuses on research and development in connection with advanced digital solutions, control processes, analytics, and remote monitoring and diagnostic solutions for application in [ ]” Additionally, the Petitioner indicated that the Beneficiary’s responsibilities included:

- Researching novel, advanced process control schemes for application in [ ] processes;
- Researching data pertaining to [ ] machines in order to derive meaningful insights;
- Developing data-driven models for virtual measurement and further research and analysis of key quality variables in [ ] processes; and
- Researching customer-specific optimization solutions.

Furthermore, the Petitioner stated that the Beneficiary performs the following duties:

- Research novel advanced process control technologies for new business opportunities (30%);
- Conduct research necessary to respond effectively to unique business opportunities and take advantage of unusual situations in the marketplace (20%);
- Research end-users [ ] processes and process data to determine the appropriate technical approach to process control (10%);
- Build accurate software models of the end-user [ ] process in order to represent and research the thermodynamic and mass balance properties for use by advanced process controls applications (10%);
- Perform research to aid in the recommendation and selection of measurement and control device locations in the end-user [ ] process piping and vessels to ensure the most accurate measurement and control opportunities for advanced process control applications (10%);
- Research appropriate resolutions to complex process control problems and foster and implement measures to achieve cost savings and ensure end-user satisfaction (10%); and
- Research and provide market feedback in connection with advanced process controls applications (10%).

In his decision denying the petition, the Director noted the Petitioner’s statements that the Beneficiary “will be responsible for leading development, sales pursuit management, proposal development, pricing development, risk, assessment, and sales strategies” and that his position involves performing “some managerial duties associated with overseeing collaboration between various teams.” The Director indicated that the aforementioned duties are not consistent with a research position and that the Petitioner offered conflicting statements that “cast doubt on what duties the Beneficiary will actually perform.” The Director concluded therefore that the record did not establish the Beneficiary’s position will be in a research capacity.

In the appeal brief, the Petitioner contends that its RFE response offered a detailed breakdown of the Beneficiary's duties, including his managerial and research responsibilities, and that there are no material discrepancies in the record. The Petitioner further maintains that the Beneficiary's position as APC Business Development Manager primarily involves performing research.

We conclude that the preponderance of the evidence shows that the Beneficiary is serving in a research position for his employer. For example, in addition to the detailed information relating to the Beneficiary's research duties and responsibilities, the Petitioner presented evidence showing that the Beneficiary has authored technical research papers for his employer in 2018 and 2019 while serving in his current position.<sup>2</sup> Accordingly, the Director's determination that the record did not establish the Beneficiary's position is in a research capacity is withdrawn.

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. Therefore, we will remand the matter 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(i)(3)(iv) 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 the entry of a new decision consistent with the foregoing analysis.

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<sup>2</sup> The Form I-140 petition in this matter was filed in April 2020.