



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
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Office: NEBRASKA SERVICE CENTER

Date: AUG 13 2007

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as Outstanding Professor or Researcher Pursuant to
Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(B)


ON BEHALF OF PETITIONER;

[REDACTED]

RECEIVED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a public university. It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B). According to the petition, the petitioner seeks to employ the beneficiary in the United States as a research investigator. The director determined that the petitioner had not established that it had offered the beneficiary a permanent job as of the date of filing.

On appeal, counsel submits a brief and additional evidence. We find that the petitioner has submitted the required initial evidence, the job offer, and the record is consistent with the petitioner's intent to employ the beneficiary in a permanent position as defined at 8 C.F.R. § 204.5(i)(2).

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(B) Outstanding professors and researchers. -- An alien is described in this subparagraph 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.

The regulation at 8 C.F.R. § 204.5(i)(3)(iii) provides that a petition must be accompanied by:

An *offer* of employment from a prospective United States employer. A labor certification is not required for this classification. The offer of employment shall be 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.

(Emphasis added.) Black's Law Dictionary 1111 (7th ed. 1999) defines "offer" as "the act or an instance of presenting something for acceptance" or "a display of willingness to enter into a contract on specified terms, made in a way that would lead a reasonable person to understand that an acceptance, having been sought, will result in a binding contract." Black's Law Dictionary does not define "offeror" or "offeree." The online law dictionary by American Lawyer Media (ALM), available at www.law.com, defines offer as "a specific proposal to enter into an agreement with another. An offer is essential to the formation of an enforceable contract. An offer and acceptance of the offer creates the contract." Significantly, the same dictionary defines offeree as "a person or entity *to whom an offer to enter into a contract is made* by another (the offeror)," and offeror as "a person or entity who makes a specific proposal *to another (the offeree)* to enter into a contract." (Emphasis added.)

In light of the above, we concur with the director that the ordinary meaning of an "offer" requires that it be made to the offeree, not a third party. As such, regulatory language requiring that the offer be made "to the beneficiary" would simply be redundant. Thus, a letter addressed to Citizenship and Immigration Services (CIS) *affirming* the beneficiary's employment is not a job *offer* within the ordinary meaning of that phrase.

The regulation at 8 C.F.R. § 204.5(i)(2), provides, in pertinent part:

Permanent, in reference to a research position, means either tenured, tenure track, or for a term of indefinite or unlimited duration, and in which the employee will ordinarily

have an expectation of continued employment unless there is good cause for termination.

On Part 6 of the petition, the petitioner indicated that the proposed employment was a permanent position. The petitioner submitted a letter from [REDACTED] Chair of the petitioner's Department of Internal Medicine, addressed to Citizenship and Immigration Services (CIS), asserting that the petitioner currently employs the beneficiary in the position of research investigator. This document does not constitute a job offer from the petitioner to the beneficiary. On March 2, 2006, the director requested evidence that the petitioner had extended a permanent job offer to the beneficiary.

In response, the petitioner submitted a joint April 19, 2004 letter from [REDACTED] and [REDACTED] Chief of Molecular Medicine and Genetics at the petitioning institution, expressing the petitioner's intent to offer the beneficiary an appointment as a research investigator effective May 1, 2004. The beneficiary officially accepted the offer at the bottom of the letter.

The director noted that the letter submitted in response to the director's request for additional evidence indicated that the offer was "contingent upon approval by the Medical School Associated Dean for Faculty Affairs" and that the record lacked evidence of the Dean's approval. The director further noted that the position was contingent upon funding and concluded that the position was not permanent as defined at 8 C.F.R. § 204.5(i)(2).

On appeal, counsel asserts that the director incorrectly analyzed the evidence and submits a new letter advising the beneficiary that the petitioner has recommended him for appointment as an Assistant Professor.

In promulgating the final regulation, the Immigration and Naturalization Services, now CIS, recognized that it is unusual for colleges and universities to place researchers in tenured or tenure-track positions. Thus, the commentary to the final rule accepts that research positions "*having no fixed term* and in which the employee will *ordinarily* have an *expectation* of permanent employment" as comparable. (Emphasis added.) *Employment-Based Immigrants*, 56 Fed. Reg. 60867, 60899 (November 29, 1991).

We cannot consider the petitioner's post-filing recommendation of the beneficiary for a tenure-track assistant professor position. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Nevertheless, we find that the petitioner had offered the beneficiary a permanent position as of the date of filing. While the job offer submitted in response to the director's request for additional evidence was one that still required the formality of approval from the Dean, we are satisfied that the letter, addressed to the beneficiary and accepted by him, constitutes a qualifying job offer. While only offering the beneficiary a one-year term, the letter indicates that the position is renewable and does not set a limit of renewals. As of the date of filing, the beneficiary's position had already been renewed, evidencing an intent to continue employing the beneficiary.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.