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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
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Washington, D.C. 20536



17 SEP 2002

File: [Redacted] (LIN-01-239-53543) Office: Nebraska Service Center Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition: Immigrant Petition for Alien Worker as an 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)

IN BEHALF OF PETITIONER:



PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a higher education and research institution. 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). The petitioner seeks to employ the beneficiary permanently in the United States as a postdoctoral fellow. The director determined that the petitioner had not established that the petitioner had offered a permanent job to the beneficiary. Specifically, the director concluded that the petitioner had failed to submit a copy of the original job offer.

On appeal, counsel asserts that the petitioner has adequately established that the job offer is for a permanent job, that Dr. Sly has the authority to sign job offer letters, and that the regulations do not require a specific format. The petitioner submits a new letter from Dr. Sly affirming that he has delegated authority to make job offers. The petitioner does not, however, submit the initial job offer letter requested by the director, the lack of which was the basis of the director's denial.

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.

8 C.F.R. 204.5(i)(1) provides:

Any United States employer desiring and intending to employ a professor or researcher who is outstanding in an academic field under section 203(b)(1)(B) of the Act may file an I-140 visa petition for such classification.

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.

Initially, the petitioner submitted a June 15, 2001 letter from Dr. Sly asserting that the letter will "substantiate" the job offer to the beneficiary by the petitioner. It indicates that the job is "on a full-time non-temporary basis with an annual compensation in the amount of \$32,000, plus other fringe employee benefits." On October 23, 2001, the director requested additional documentation. Specifically, the director requested, "the actual offer of employment made by St. Louis University to the beneficiary, including any attachments describing terms and conditions of employment."

In response, the petitioner submits a new letter from Dr. Sly asserting that the job is "of multiple-year and indefinite duration." Counsel asserts that the letter "clearly indicates that the employment opportunity is on a permanent and indefinite basis."

Noting that the petitioner had not submitted the original job offer as requested, the director denied the petition.

On appeal, counsel asserts that the director incorrectly denied the petition because the "format" of the job offer was not acceptable to the director. Counsel argues that the regulations do not specify a particular format for the job offer and that Dr. Sly is authorized to issue job letters.

The petitioner submits a new letter from Dr. Sly asserting that he is authorized to extend job offers for postdoctoral fellows. He continues that the job is indefinite, with unlimited duration, and presumes continued employment subject to an annual memorandum of agreement as required by university policy for all nontenure- or tenure-track faculty. While the petitioner submits the health benefits attachment for the beneficiary's job, the petitioner has still not submitted the original job offer letter.

While we agree that the regulations do not require a specific "format" for the job offer, it does require a job offer, not a letter confirming a previous job offer.¹ The record does not contain the original job offer letter to the beneficiary.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. By failing to submit evidence specifically requested by the director, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ The petitioner's website, [REDACTED] indicates that while the administrators of each major division have the authority to fill jobs, job offers must be extended by the employment office. Thus, any original offer of employment should have been issued by that office.