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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
LIN 03 228 52084

Office: NEBRASKA SERVICE CENTER

Date: AUG 17 2009

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:



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 N. Wismann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner is an education and research institute. 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 associate. The director determined that the petitioner had not established that it had offered the beneficiary a permanent job as of the date of filing.

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.

(Emphasis added.) 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.

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.

(Underlined emphasis added.) On Part 6 of the petition, the petitioner indicated that the proposed employment was a permanent position. The petitioner submitted a June 23, 2003 letter from ██████████ Chair of the petitioner's Department of Pathology, offering the beneficiary an appointment as an instructor in that department. The references letters from faculty at the petitioning institution indicate that the petitioner will promote the beneficiary to an Assistant Professor.

On January 15, 2004, the director requested a letter addressed to the beneficiary from a hiring authority with the precise terms of the beneficiary's employment. In response, ██████████ explains, in a letter addressed to the director, that the beneficiary's employment "is intended to be permanent."

The director determined that the record lacked an offer of employment from the petitioner to the beneficiary or evidence that the instructor position was "permanent." On appeal, the petitioner submits an e-mail purporting to confirm the beneficiary's post-filing appointment as a tenure-track assistant professor. An e-mail is far less persuasive evidence than an official letter on university letterhead. Counsel asserts that the regulations do not require an offer of employment addressed to the beneficiary.

The regulation at 8 C.F.R. § 204.5(i)(iii) requires a letter "offering the alien" a job. An offer can only be made to the offeree. As such, including a requirement in the regulation that the job offer letter be *addressed* to the beneficiary would be redundant. Thus, we reject counsel's assertion that a job offer letter addressed to the beneficiary is not required. That said, the director erred in asserting that no such offer was included. The record does include a letter offering the beneficiary a position as an instructor. In addition, as the position involves teaching courses, the job is not predominantly a research position. According to the statute and regulations quoted above, the definition of "permanent" relates to research positions only. As such, what is relevant is not whether the position is permanent, but whether it is classified as tenure track.

Therefore, this matter will be remanded for consideration of whether the petitioner officially classifies instructor positions as "tenure-track." Such evidence might include a faculty classification scheme set forth in an official faculty handbook. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.