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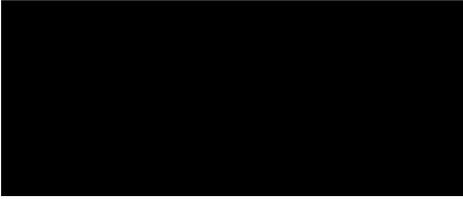
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship and Immigration Services

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FILE: LIN 03 133 53450 Office: NEBRASKA SERVICE CENTER Date: MAY 26 2005

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]

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, 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. While the appeal does not succeed on its merits, we withdraw the director's decision and remand the matter for the sole purpose of affording the petitioner an opportunity to respond to derogatory information publicly available on the petitioner's own website accessed by this office.

The petitioner is a research and education 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). According to the petition, the petitioner seeks to employ the beneficiary permanently 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.

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.

On Part 6 of the petition, the petitioner indicated that the proposed employment was a permanent position. The petitioner submitted a letter from [REDACTED] of the Nondestructive Evaluation Laboratory to Citizenship and Immigration Services (CIS), asserting that the job set forth on the petition was still being offered to the beneficiary. This document does not constitute a job offer from the petitioner to the beneficiary. On November 12, 2003, the director requested evidence that the petitioner had extended a permanent job offer to the beneficiary, including any employment contract and the original job offer letter.

In response, the petitioner submitted the position description for the Research Associate 1-Engineer. The petitioner highlighted that the position was full-time and regular. The petitioner failed to highlight the notation that the position appointment length is "12/12 Months." The "Title Group" of the position is "unclassified."

The petitioner also submitted a letter from [REDACTED] Human Resources Professional, addressed to Citizenship and Immigration Services. She confirms that the beneficiary is employed as a Research Associate 1-Engineer, which she characterizes as "permanent." Subsequently, however, she states that "most regular research positions at [the petitioning institution] are approved on an annually renewable basis." She continues that renewal "each year is contingent upon satisfactory performance of duties and availability of research funds." She concludes that the beneficiary's appointment "will be renewed indefinitely on an annual basis."

The petitioner also submits "Guidelines for Permanent Residency Sponsorship." The guidelines provide that "the department must be prepared to write a letter of offer stating that the employment is indefinite (i.e. permanent)."

The director stated that the petitioner had not submitted a copy of an employment offer made by the petitioner to the beneficiary and concluded that the petitioner had not met the regulatory evidentiary requirement of submitting a letter offering the beneficiary a permanent research position in his academic field.

On appeal, the petitioner submits a letter from [REDACTED] Department of Industrial Welding and Systems Engineering dated May 20, 2004, more than a year after the petition was filed.

██████████ purports to offer the beneficiary a position that was orally offered to and accepted by the beneficiary on June 1, 2002. ██████████ asserts the previous offer “was never reduced to writing. ██████████ continues that the offer “is of indefinite or unlimited duration in which you should expect continued employment unless there is good cause for termination in accordance with Ohio laws.”

We find that the director’s decision could be upheld. While requested by the director, the petitioner failed to submit the beneficiary’s contract. As there is no evidence that the petitioner has offered the beneficiary a position other than the one he already occupies, that contract is material evidence that has been requested and not submitted. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Moreover, the use of general words like “permanent” and “indefinite” are not determinative when contradicted by the specific terms of employment, sometimes in the same letter. We concur with the director that the specific employment terms set forth in ██████████ letter, however characterized by her, represent a limited term of employment renewable at the option of the petitioner. In addition, the term of the petitioner’s position, as indicated on the job listing submitted, is “12/12 Months.” It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record does not resolve the inconsistencies between the characterizations of the beneficiary’s job by ██████████ and the limited term of the beneficiary’s employment, albeit renewable at the discretion of the petitioner, also demonstrated in the record, including in ██████████

In addition, the evidence submitted on appeal is not persuasive. First, we agree with the director that the regulations require an offer of employment from the petitioner to the beneficiary setting forth the title, terms and conditions of the position offered. A letter addressed to the beneficiary after the date of filing cannot demonstrate eligibility as of that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

Further, the letter submitted on appeal is contradicted by the petitioner’s own policies as reflected on its website. However, the petitioner, while it should be aware of its own publicly available policies, has not been afforded an opportunity to respond to our concerns regarding its policies, which we have now made part of the record. Thus, we withdraw the director’s decision and remand the matter to the director for the sole purpose of affording the petitioner an opportunity to respond to the following information obtained from its website. The director should enclose copies of the information, summarized as follows:

1. According to Rule 4.20 of the petitioner’s appointment policy, “offers of employment should be confirmed in writing and signed by the authorized administrator.” The petitioner’s website includes sample confirmation letters of telephone job offers, suggesting that the petitioning institution does not condone purely oral job offers confirmed in writing years after they were made.
2. Rule 4.20(I) of the petitioner’s Appointments Policy provides: “Regular, unclassified appointments are at will.” “Employment at will” is defined as “Employment that is usu. undertaken without a

contract and that may be terminated at any time, by either the employer or the employee, without cause.” Black’s Law Dictionary 545 (7th ed. 2001).

3. The petitioner’s website, “Letters of Offer for Unclassified Staff” provides that job offer letters are required to state that the petitioner “is required by federal law to verify the identity and work authorization of all new employees. Accordingly, this offer is contingent upon such verification.” This language does not appear in [REDACTED] letter. The same page provides:

Language in letters of offer may create a contract. Because of this, letters should not include the following:

1. References to permanent employment, termination for just cause, probationary periods, specific expectations of performance, or salary increases. A copy of the position description can be provided to the employee after acceptance of the position.
2. Specific causes for termination or dismissal.

This language calls into question the legitimacy of the letters from [REDACTED]. It also blatantly contradicts the “Guidelines for Permanent Residency Sponsorship” submitted by the petitioner.

In light of the above, the matter is remanded to the director for the sole purpose of advising the petitioner of the derogatory evidence publicly available on its own website and affording the petitioner an opportunity to respond pursuant to the regulation at 8 C.F.R. § 103.2(b)(16)(i). We note, however, that, as stated above, any attempt to explain or reconcile inconsistencies in the record, which now includes the petitioner’s own policies as reflected on its website, will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

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 that, *regardless of outcome*, is to be certified to the Administrative Appeals Office for review.