



U.S. Citizenship
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Services

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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **SEP 30 2005**
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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.

Maui Johnson

S Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference 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 sustained and the petition will be approved.

The petitioner is a university. It seeks to classify the beneficiary as an outstanding professor 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 in the United States as an assistant professor. 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] addressed to Citizenship and Immigration Services (CIS), asserting that the beneficiary has been employed in a tenure-track position since July of 2000. This document does not constitute a job offer from the petitioner to the beneficiary. On October 29, 2003, the director requested evidence that the petitioner had extended a permanent job offer to the beneficiary. The director advised that "[s]ubmission of only part of the evidence requested will be considered a request for a decision based upon the record."

In response, the petitioner submitted another letter addressed to CIS indicating that the beneficiary's position "will be on tenure track." Dr. Eagle further asserts that the petitioner does not "execute contracts for employment purposes." The director noted the lack of a job offer to the beneficiary and found Dr. Eagle's statement regarding the lack of employment contracts at the petitioning institution unclear.

On appeal, counsel asserts that "the regulations do not require that an offer letter be made to the alien."

We concur with the director that the ordinary meaning of an "offer" requires that it be made to the offeree, not a third party. Regulatory language requiring that the offer be made "to the beneficiary" would simply be redundant. Thus, a letter addressed to CIS is not a job offer within the ordinary meaning of that phrase. Nevertheless, we acknowledge that the beneficiary's complete immigration file includes a job offer addressed to the beneficiary dated February 4, 2000, prior to the date of filing. The letter clearly provides that the job offer is for a tenure-track position. Thus, eligibility is established.

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.