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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **MAY 11 2006**  
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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:

SELF-REPRESENTED

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 dismissed.

The petitioner is an institution of higher learning. 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 in the United States as an assistant professor/senior research. 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, the petitioner asserts that it has provided sufficient evidence of a permanent job offer.

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 (7<sup>th</sup> 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." ALM's online law dictionary, available at [www.law.com](http://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], Dean of the petitioning university, addressed to Citizenship and Immigration Services (CIS), asserting that the petitioner “is renewing the full-time appointment of [the beneficiary] as an Assistant Professor (Senior Research).” [REDACTED] characterizes the position as “long-term” and expresses the petitioner’s “every expectation that [the beneficiary] will continue to serve for an unlimited duration.” The petitioner also submitted an “addendum” from [REDACTED] Vice Provost for Academic Affairs and International Programs, asserting that the beneficiary’s position cannot be tenure or tenure-track because it is a pure research position. Thus, the beneficiary’s position is defined as “fixed-term.” These documents do not constitute a job offer from the petitioner to the beneficiary. On June 22, 2005, the director requested evidence that the petitioner had extended a permanent job offer to the beneficiary.

In response, the petitioner submitted a letter addressed to the beneficiary dated August 8, 2005 intended to “clarify” his employment. The letter is jointly signed by [REDACTED] and [REDACTED], Vice Provost for Academic Affairs and International Programs. The letter asserts that the beneficiary has a “non-tenure track, full-time renewable 12-month position,” but that the petitioner “fully expects to continue your employment for an unlimited or indefinite duration unless you are terminated in accordance with rules and regulation governing faculty appointments at” the petitioning university. The petitioner did not provide copies of those rules and regulations.

The director first stated that the petitioner was “silent” as to whether the employment was permanent, but then noted that the beneficiary’s employment is clearly fixed-term with annual renewal possible. The director concluded that the offer was not for a permanent position as defined in the regulations.

On appeal, the petitioner submits a new letter from [REDACTED]. She asserts that previous letters were not “silent” on the petitioner’s intention. Rather, they expressed an intent to employ the beneficiary indefinitely. The Vice Provost further asserts that the petitioner does not file immigrant petitions for those it does not intend to employ long-term. She asserts that the beneficiary is a co-Principal Investigator on four federal grants that will secure his full salary for the next three years. The Vice Provost indicates that the College of Oceanic and Atmospheric Sciences (COAS) at the petitioning university “provides a pathway to tenure for professors in research classifications upon recommendation from the Dean of the College and the scholar’s discipline.” Further, COAS policy states that promotion considerations for research faculty are the same as those for tenure-track faculty, both of which are limited to 12-month fixed-term appointments.

We acknowledge that that the statute allows the job offer to be for a research position comparable to tenure or tenure-track. The regulation provides a more specific definition that binds us in this matter. Specifically, the job offer must be for a position where the beneficiary will ordinarily have an expectation of continued employment unless there is good cause for termination. As stated above, the petitioner did not provide its official termination policies. Thus, we cannot evaluate whether the petitioner’s decision not to renew an annual contract is discretionary or whether it must show good cause when it fails to renew an annual contract. Without such information, we cannot determine

whether the beneficiary can be terminated without good cause and, thus, whether the job offer is qualifying.

Subsequently, the petitioner submitted evidence that it has now offered the beneficiary a tenure-track position. The petitioner itself must be accompanied by a qualifying job offer. Evidence that the petitioner offered the beneficiary a qualifying job after the date of filing is not evidence of the beneficiary's eligibility as of that date. Rather, such evidence may serve as evidence in a future petition with a new priority date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

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 not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.