



U.S. Citizenship
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FILE:



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Office: NEBRASKA SERVICE CENTER

Date:

MAY 19 2006

IN RE:

Petitioner:

Beneficiary:



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.

Mai Johnson

Σ Robert P. Wiemann, Chief
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 appeal will be dismissed.

The petitioner is a university. 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 a research scientist. 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, counsel addresses only one of three concerns raised by the director. The petitioner submits a new letter confirming the beneficiary's terms of employment. For the reasons discussed below, this new letter does not overcome two of the director's concerns.

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 (7th 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." American Lawyer Media's (ALM) online law dictionary, available at 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] a professor at the petitioning university, addressed to Citizenship and Immigration Services (CIS), confirming that the beneficiary's employment with the petitioner "is of indefinite duration, with the expectation of continued employment, but terminable at will." This document does not constitute a job offer from the petitioner to the beneficiary. On April 21, 2005, the director requested evidence that the petitioner had extended a permanent job offer to the beneficiary.

In response, the petitioner submitted a letter dated June 8, 2005, addressed "To Whom It May Concern," affirming that the beneficiary's employment with the petitioner "is of indefinite duration, with the expectation of continued employment, but terminable at will for good cause, by either party." The letter concludes that the beneficiary has "an expectation of continued employment with the [petitioner] absent good cause for termination." [REDACTED] and the beneficiary jointly signed the letter.

The director determined that the petitioner had failed to submit the initial evidence required pursuant to the regulation at 8 C.F.R. § 204.5(i)(3)(iii). The director further determined that a review of the petitioner's website revealed that professors do not have hiring authority. Finally, the director questioned whether "terminable at will for good cause" might be internally contradictory in nature.

On appeal, counsel asserts that the director denied the petition solely because the person who signed the June 8, 2005 letter did not clearly have authority to confirm the nature of the beneficiary's employment.

The petitioner submits a letter dated September 1, 2005 addressed to the beneficiary. [REDACTED], Department Head; [REDACTED] Senior Administrative Director; [REDACTED] Dean; and the beneficiary are all signatories to the letter. The letter provides:

This letter is offered to confirm that your employment with the [petitioner] is of indefinite duration, with the expectation of continued employment, but terminable at will for good cause by either party. Consequently, you have an expectation of indefinite continued employment with the [petitioner] absent good cause for termination.

Counsel fails to acknowledge some of the concerns raised by the director. Specifically, the director stated that the petitioner had failed to submit the initial job offer, required initial evidence pursuant to 8 C.F.R. § 204.5(i)(3)(iii).

The new letter submitted on appeal does not resolve this concern, which was raised by the director but is not addressed by counsel on appeal. First, as discussed above, the common definitions of "offer" and related terms supports the director's conclusion that the regulation at 8 C.F.R. § 204.5(i)(3)(iii) requires the submission of the initial job offer letter. We note that the petitioner signed the petition in Part 8, authorizing "the release of any information from my records which [CIS] needs to determine eligibility for the benefit I am seeking." Thus, the petitioner may also be required to submit an employment contract to establish the terms and conditions of employment if they are not set forth in the job offer letter.

The director specifically requested the initial job offer letter issued to the beneficiary. In response, the petitioner submitted a letter that is not addressed to the beneficiary and is dated after the director's request. 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). Even if we were to conclude that the regulation and request for additional evidence did not place the petitioner on sufficient notice, the denial itself did. The new evidence on appeal is not the required initial evidence requested by the director. Specifically, while addressed to the beneficiary it is not the initial job offer letter and is dated after the date of filing. The petitioner must establish that it had offered the beneficiary a permanent job prior to that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

Finally, while there may be circumstances where "at-will" employment is qualifying, it is the petitioner's burden to demonstrate that the employment is qualifying. Without the actual job offer and, if the letter does not include the terms and conditions of employment, the employment contract, the petitioner cannot meet its burden.

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.