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U.S. Citizenship  
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FILE: [REDACTED]  
LIN 06 017 50002

Office: NEBRASKA SERVICE CENTER

Date: SEP 05 2006

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

**PUBLIC COPY**

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 sustained and the petition will be approved.

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). According to the petition, the petitioner seeks to employ the beneficiary in the United States as an assistant research 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.

On appeal, the petitioner submits a brief and supporting exhibits.

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." The online law dictionary by American Lawyer Media (ALM), 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 addressed to the beneficiary from [REDACTED] Director of the petitioning institute; [REDACTED], Dean of the petitioner's College of Agricultural Human and Natural Resources Sciences; [REDACTED] Vice Provost for Research and [REDACTED] Provost. The letter, dated August 8, 2005, offers the beneficiary a "full-time 12-month position for a term of indefinite duration in which [the beneficiary] will have an expectation of continued employment unless terminated under the terms of the Faculty Manual." The letter refers the beneficiary to a website with the Faculty Manual. The petitioner also submitted a letter signed by the same individuals addressed "To Whom it May Concern" confirming the same information.

On January 24, 2006, the director issued a notice of intent to deny, asserting that he had accessed the Faculty Manual, which provides that faculty without tenure have "no presumption of reappointment." The director further noted that the petitioner had changed the wording of its job offer from the offer submitted in support of a previous petition.

In response, the petitioner asserted that while the petitioner had no contractual right to continued reappointment, she has a practical expectation of continued employment unless there is good cause for termination. The director concluded that the petitioner had not overcome the director's basis of proposed denial. On appeal, the petitioner asserts that its Faculty Manual provides more protection than typical at-will appointments, requiring up to 12 months notice of termination.

In promulgating the final regulation, the Immigration and Naturalization Services, now CIS, recognized that it is unusual for colleges and universities to place researchers in tenured or tenure-track positions. Thus, the commentary to the final rule accepts that research positions "*having no fixed term* and in which the employee will *ordinarily* have an *expectation* of permanent employment" are comparable. (Emphasis added.) 56 Fed. Reg. 60867, 60899 (November 29, 1991).

We disagree with the director that the change in language from the last petition is problematic. The director cannot fairly fault the petitioner for attempting to remedy deficiencies from its prior petition by making a new offer of employment. That the language tracks the regulatory definition of permanent is not problematic as it appears in a job offer letter addressed to the beneficiary, the pertinent initial evidence required for the classification sought. In this matter, the petitioner has submitted the initial required evidence, the job offer issued to the beneficiary. It has provided evidence that it intends this position to be permanent, an intention that is not inconsistent with the actual job offer itself. Thus, we withdraw the director's sole basis of denial.

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.