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FILE: LIN 06 042 51817 Office: NEBRASKA SERVICE CENTER Date: **AUG 29 2007**

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.

*for*   
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 (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

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 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.

On appeal, the petitioner asserts that it has offered the beneficiary a permanent position as defined at 8 C.F.R. § 204.5(i)(2). We concur with the petitioner that the position offered is permanent as defined in the pertinent regulation. Upon review of the record, however, we withdraw the director's finding that the beneficiary meets the necessary two regulatory criteria and remand the matter for a full decision on that issue taking into account the considerations set forth at the end of this decision.

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 from [REDACTED] Chairman of the petitioning department, addressed to CIS, asserting that the petitioner employed the beneficiary as a research associate, a “full time and permanent” position. This document does not constitute a job offer from the petitioner to the beneficiary. On March 17, 2006, the director requested evidence that the petitioner had extended a permanent job offer to the beneficiary.

In response, the petitioner submitted a letter dated April 22, 2004, addressed to the beneficiary offering him a position as a research associate with an annual salary of \$29,000. The letter provides that such appointments are made on a “year to year basis” but have “excellent prospects for continuation, and are considered permanent.” The director concluded that the position was not permanent.

In promulgating the final regulation, the Immigration and Naturalization Service, 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*” as comparable. (Emphasis added.) 56 Fed. Reg. 60897, 60899 (November 29, 1991).

The job offer does not indicate that the beneficiary’s position is limited to a particular number of renewals and expresses the petitioner’s opinion that the *appointment*, not the position, is considered “permanent.” Thus, we are satisfied that the position is permanent as defined at 8 C.F.R. § 204.5(i)(2).

Nevertheless, we must remand the matter to the director for additional analysis as to the beneficiary’s international recognition as outstanding. The director concluded that it “appears that the beneficiary has met two of the criteria” set forth in the regulation at 8 C.F.R. § 204.5(i)(3)(i). The director does not indicate which two criteria the beneficiary meets. The petitioner asserts that the beneficiary has won a major national award or prize, has been the subject of published material, has made original contributions and has authored scholarly articles pursuant to the regulatory criteria at 8 C.F.R. § 204.5(i)(3)(i)(A),(C),(E) and (F). In reconsidering the record, the director shall do the following:

- The director shall consider whether the record contains copies of the beneficiary’s awards. See 8 C.F.R. § 103.2(b)(2) (regarding the submission of primary evidence, secondary evidence and affidavits). The director shall also consider whether the petitioner has submitted objective evidence establishing that either alleged award, one of which was simply a travel grant to present his work at a conference, is a *major prize or award*. 8 C.F.R. § 204.5(i)(3)(i)(A); see also *Employment-Based Immigrants*, 56 Fed. Reg. at 60899 (acknowledging only the *possibility*

that a major award that is not international might still be indicative of international recognition as an outstanding researcher).

- The director shall also consider whether citations and articles that acknowledge the beneficiary's participation at less than authorship level are articles about the beneficiary or his work as required by the regulation at 8 C.F.R. § 204.5(i)(3)(i)(C).

The director shall consider whether the evidence relating to the beneficiary's contributions, foreign patents and letters from the beneficiary's immediate circle of collaborators, is indicative of or uniquely consistent with international recognition as an outstanding researcher. 8 C.F.R. § 204.5(i)(3)(i)(E); *see also Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215, 221, n.7 (Comm. 1998) (involving a lesser classification but discussing the case-by-case evaluation necessary when reviewing a patent.)

Therefore, this matter will be remanded for consideration of the beneficiary's eligibility. 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 which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.