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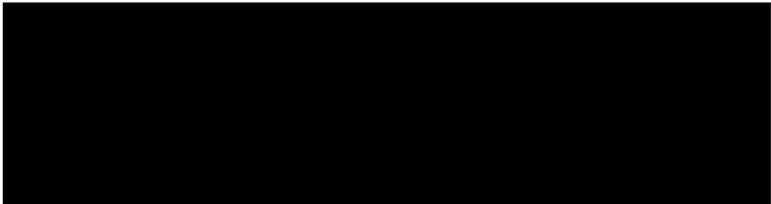


FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: JAN 05 2007
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IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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.

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 a university and medical research institution. 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 Part 6 of the petition, 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 or that the beneficiary is recognized internationally as outstanding in his academic field, as required for classification as an outstanding researcher.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, we conclude that the petitioner has now overcome the director's finding that the beneficiary is not recognized internationally as outstanding, but has not overcome the director's finding that the petition was not supported with the initial required evidence, a job offer predating the filing of the petition. As the petitioner has not overcome all of the director's bases for denial, we must dismiss the appeal.

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)(i) states that a petition for an outstanding professor or researcher must be accompanied by “[e]vidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition.” The regulation lists six criteria, of which the petitioner must satisfy at least two. It is important to note here that the controlling purpose of the regulation is to establish international recognition, and any evidence submitted to meet these criteria must therefore be to some extent indicative of international recognition. More specifically, outstanding professors and researchers should stand apart in the academic community through eminence and distinction based on international recognition. The regulation at issue provides criteria to be used in evaluating whether a professor or researcher is deemed outstanding. 56 Fed. Reg. 30703, 30705 (July 5, 1991). The director found that the beneficiary met the criterion at 8 C.F.R. § 204.5(i)(3)(i)(F), relating to the authorship of published articles, and we concur with that finding. Thus, the beneficiary must meet one additional criterion in order to be eligible.

We find that the petitioner has established that the beneficiary has made original contributions to the field consistent with international recognition.

Obviously, the petitioner cannot satisfy the criterion set forth in the regulation at 8 C.F.R. § 204.5(i)(3)(i)(E) simply by listing the beneficiary’s past projects and demonstrating that the beneficiary’s work was “original” in that it did not merely duplicate prior research. Research work that is unoriginal would be unlikely to secure the beneficiary a master’s degree, let alone classification as an outstanding researcher. Because the goal of the regulatory criteria is to demonstrate that the beneficiary has won international recognition as an outstanding researcher, it stands to reason that the beneficiary’s research contributions have won comparable recognition. To argue that all original research is, by definition, “outstanding” is to weaken that adjective beyond any useful meaning, and to presume that most research is “unoriginal.”

The director concluded that “most” of the letters were from the beneficiary’s colleagues and that the record did not establish that the beneficiary was recognized as outstanding beyond those colleagues. While the submission of letters from members of the field beyond the beneficiary’s circle of colleagues does not always establish eligibility, we find that in this matter the letters, especially those submitted on appeal, in combination with the remarkably positive discussion of the beneficiary’s work in the articles that cite him, serve to meet this criterion.

The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien’s eligibility. *See Matter of Caron International*, 19 I&N Dec. 791, 795-796 (Comm. 1988). CIS may

even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of widespread acclaim and vague claims of contributions are less persuasive than letters that specifically identify contributions and provide specific examples of how those contributions have influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review.

The beneficiary's current work focuses on the use of statins to treat Multiple Sclerosis and relates to **statin use for other diseases**. Notably, Dr. [REDACTED] Head of the Department of Cellular Therapy at University College, London, asserts that he learned of the beneficiary's work through his publications and that his work "has also informed my own research and has opened up new avenues of clinically relevant research around the world." A 2004 review article in *Current Opinion in Neurology* notates the beneficiary's work as "of outstanding interest." In a published speech, the researchers performing human clinical trials of statins in Multiple Sclerosis patients expressly mention one of the beneficiary's articles as work "that led to the initiation of several clinical trials." These trials have attracted media coverage in the general media. Finally, as stated above, some of the beneficiary's work is well cited.

In light of the above, the petitioner has now demonstrated that the beneficiary meets the criterion at 8 C.F.R. § 204.5(i)(3)(E) in addition to the criterion identified by the director as satisfied. Thus, the petitioner has not established that the beneficiary is recognized internationally as outstanding.

While we withdraw the director's finding that the beneficiary is not recognized internationally as outstanding, it remains to determine whether the petitioner submitted the required initial evidence regarding a qualifying job offer, the director's second basis for denial. 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." The online law dictionary by American Lawyer Media (ALM), 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 Dr. [REDACTED] the beneficiary's supervisor at the petitioning university, addressed to Citizenship and Immigration Services (CIS), affirming the petitioner's "commitment to continue to employ" the beneficiary. This document does not constitute a job offer from the petitioner to the beneficiary. On April 19, 2006, the director requested evidence that the petitioner had extended a permanent job offer to the beneficiary.

In response, the petitioner submitted a letter offering the beneficiary an instructor position date May 22, 2006, more than a month after the petition was filed. The director noted that the petitioner had not submitted a job offer that predates the filing of the petition. On appeal, counsel asserts that the

petitioner has employed the beneficiary for six years, promoting him to a research scientist in January 2003 and to an instructor in July 2006. Counsel asserts that because the petitioner had initiated the process to promote the beneficiary to an instructor when the petition was filed the petitioner felt the May 22, 2006 letter was responsive to the director's request for additional evidence.

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 petitioner must establish that the position offered to the beneficiary when the petition was filed merits the classification sought; a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). *See also* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971); *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978).

As stated by the director, 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). Moreover, the non-existence or other unavailability of required evidence creates a presumption of ineligibility. While we recognize that the petitioner offered the beneficiary a promotion after the date of filing, at issue is the job offer that had been extended to the beneficiary prior to that date. The record is absent the alleged 2003 job offer for the research scientist position. Thus, we concur with the director that the record lacks the required initial evidence, a qualifying job offer that predates the filing of the petition.

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.