



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**



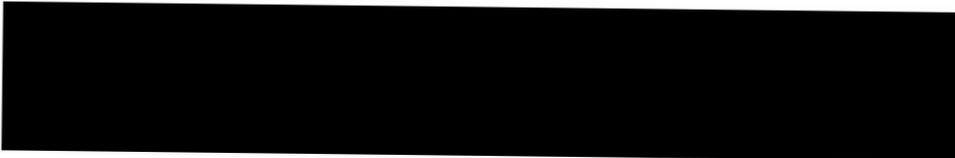
B3

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: JAN 09 2007  
LIN 06 051 50697

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 sustained and the petition will be approved.

The petitioner is an education/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 the petition, the petitioner seeks to employ the beneficiary in the United States as a senior 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, counsel submits a brief, a June 6, 2006 Interoffice Memorandum from Michael Aytes, Acting Director for Domestic Operations, Citizenship and Immigration Services (CIS) and previously submitted letters from the petitioner addressed to CIS and to the beneficiary. For the reasons discussed below, we find that the beneficiary enjoys an ordinary expectation of continuous employment.

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] Director of the petitioner's Office of Foreign Faculty and Scholars, addressed to Citizenship and Immigration Services (CIS), asserting that the petitioner desires to employ the beneficiary indefinitely. The petitioner also submitted a letter from [REDACTED], Chair of the petitioner's Engineering Department confirming the beneficiary's employment with the petitioner. Neither document constitutes a job offer from the petitioner to the beneficiary. On March 11, 2006, the director requested evidence that the petitioner had extended a permanent job offer to the beneficiary.

In response, the petitioner submitted a new letter from [REDACTED] addressed to CIS asserting that the beneficiary has worked for the petitioner since September 1, 2002 and has a permanent position terminable only for good cause. [REDACTED] notes that only teaching positions are tenure-track or tenured positions whereas researchers are employed "based on indefinitely renewable contracts." [REDACTED], Associate Vice President for Research, confirming that the beneficiary's projects have been and continue to be well funded. The petitioner also submitted the employment offers issued to the beneficiary in 2002, 2003, 2004 and 2005. The positions offered were all for one year and contingent on satisfactory performance and funding.

The director concluded that while the position itself may be permanent, the yearly offers of employment reveal that each appointment had a termination date. Thus, the director concluded that the offer was non-qualifying.

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).

In this matter, the petitioner has submitted the required initial evidence, the relevant job offer. The petitioner has not only advised CIS of its intent to employ the beneficiary indefinitely but has corroborated that intent with evidence of its continuous renewal of the beneficiary's employment over several years. The job offer is not inconsistent with the petitioner's stated intent as it does not limit the number of renewals in the position offered. Thus, we are satisfied that the beneficiary ordinarily has an expectation of permanent employment as defined in the regulation at 8 C.F.R. § 204.5(i)(2).

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.