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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: OCT 31 2007
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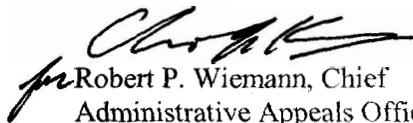
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:
[Redacted]

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, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

According to Part 5 of the petition, the petitioner is a "Department of Energy National Labora[tory]." The petitioner 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 staff scientist. The director determined that the petitioner is not an eligible petitioner for the classification sought.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, we concur with the director's conclusion that a government agency or other public entity cannot file a petition seeking to classify a beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Act. Nevertheless, the petitioner in this matter is not a government agency but a private employer managing a laboratory for a government agency.

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.

(Emphasis added.)

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.)

The regulation requires a job offer¹ from an institution of higher education or a private employer. In the legislative history, Congress stated that an "invitation for employment by a university or private employer must accompany a petition for admission." *Family Unity and Employment Opportunity Immigration Act of 1990 House Report*, H.R. Rep. No. 101-723, 59-60 (Sept. 19, 1990). Thus, it is clear that the petition must be filed by an institution of higher education or a private employer.

¹ 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.) 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.

It is rudimentary that interpretation of the statutory language begins with the terms of the statute itself, and if those terms, on their face, constitute a plain expression of congressional intent, they must be given effect. *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1994). Where Congress's intent is not plainly expressed, we then need to determine a reasonable interpretation of the language and fill any gap left, either implicitly or explicitly, by Congress. *Id.* at 843-44. The rules of statutory construction dictate that we take into account the design of the statute as a whole. *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988). Moreover, the paramount index of congressional intent is the plain meaning of the words used in the statute taken as a whole. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987). The legislative purpose is presumed to be expressed by the ordinary meaning of the words used. *INS v. Phinpathya*, 464 U.S. 183, 189 (1984).

We must presume that the use of the word "private" in the statute is not superfluous and, thus, that it has some meaning. See *Walters v. Metro. Educ. Enters.*, 519 U.S. 202, 209 (1997); *Bailey v. U.S.*, 516 U.S. 137, 145 (1995). Black's Law Dictionary 1213 (7th ed. 1999) defines "private" as "[r]elating or belonging to an individual, as opposed to the public or the government." (Emphasis added.) Thus, the director correctly concluded that a government agency cannot file a petition in the classification sought in this matter.

On March 6, 2007, the director issued a notice of intent to deny (NOID), requesting evidence that the petitioner is "either a university or an institution of higher education, or a private employer as required under [section 203(b)(1)(B) of the Act]." In response, the petitioner submitted Internet materials about UT-Battelle, LLC, indicating that the company is "the legal entity responsible for leading [the petitioner], as the Laboratory enters the 21st Century." Also included were materials about [REDACTED] indicating that the petitioning facility was established in 1943, while the Department of Energy which now funds the laboratory was not created until the 1970s. In addition, the petitioner submitted [REDACTED] contract with the Department of Energy, which provides that [REDACTED] "shall use its best efforts to provide the necessary personnel, equipment, materials, supplies, and services (except as may be provided by the Government)." The petitioner also submitted Appendix A to the contract, which provides that [REDACTED] "shall select, manage, and direct its work force." Finally, the petitioner submitted state materials about [REDACTED] confirming that it is registered with the State of Tennessee as an active non-profit, limited liability company.

The director accepted that UT-Battelle is a private employer, but concluded that the petitioner is not but [REDACTED]. On appeal, counsel asserts that the petitioner is funded by the Department of Energy, but is administered, managed, operated and staffed by [REDACTED]. Counsel explains that Federally Funded Research and Development Centers (FFRDCs) are organized as independent entities "to ensure the highest levels of objectivity." Counsel asserts that the petition was electronically filed and there was no room to specify that the petitioner was [REDACTED] - managed by [REDACTED]. Counsel further notes that [REDACTED] was identified in counsel's cover letter accompanying the petition, on the letterhead stationary of the petitioner's support letters and in documentation submitted in response to the NOID.

The petitioner submits the Department of Homeland Security Management Directives System's 2006 report, *Establishing or Contracting with Federally Funded Research and Development Centers (FFRDCs) and National Laboratories*. Page 3 of the report provides that FFRDCs are "outside the government." The petitioner also submits the U.S. Department of Energy Efficiency and Renewable Energy Program Management Guide (December 2003), Appendix G-3, *Role of National Laboratories*, which provides that national laboratories are FFRDCs and further states that national laboratory employees are precluded from "performing inherently Governmental functions."

The record satisfactorily establishes that [REDACTED] is the entity that manages the facility named as the petitioner. Significantly, the Federal Employment Identification Number (FEIN) listed on the petition as that of the petitioner is [REDACTED]. Thus, we are satisfied that the petitioner and employer in this matter is a private, non-governmental entity and, therefore, the petitioner has overcome the sole ground for denial identified by the director.

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.