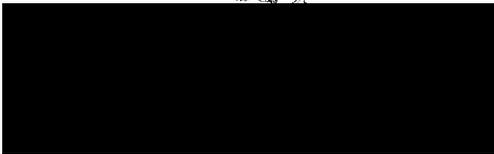




U.S. Citizenship
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FILE: LIN 04 084 51960 Office: NEBRASKA SERVICE CENTER Date: OCT 06 2005

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.

Mark Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a state education 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). The petitioner seeks to employ the beneficiary in the United States as a research/adjunct professor--Chemistry. 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 additional evidence, including the beneficiary's employment contract.

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.

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. Stephen Affleck, Chair of the Department of Civil Engineering, addressed to Citizenship and Immigration Services (CIS), asserting that the petitioner was performing research in the petitioner's geo-environmental research laboratory and collaborating with the College of Engineering in addition to "filling a much-needed role as an adjunct professor in the Chemistry Department here." This document does not constitute a job offer from the petitioner to the beneficiary. On February 9, 2005, the director requested evidence that the petitioner had extended a permanent job offer to the beneficiary.

In response, the petitioner submitted a letter addressed to CIS from the petitioner's president, [REDACTED] provides the same information provided by Dr. Affleck. In light of the petitioner's failure to submit the requested evidence, the director accessed the petitioner's website, www.boisestate.edu, where it located the petitioner's policy manual. The director noted that the policy manual references employment contracts and provides that nontenured faculty "have no continued expectation of employment beyond their current contract of employment."¹ The director further noted that the record lacked evidence that the petitioner had offered the beneficiary a tenured or tenure-track position. Thus, the director concluded that the petitioner had not demonstrated that it had made a qualifying job offer to the beneficiary.

On appeal, counsel asserts that the petitioner initially hired the beneficiary as a postdoctoral research associate on January 21, 2003 and offered the beneficiary a "permanent" position as set forth in a memorandum dated June 18, 2003. Counsel further asserts that job offer letters are not required and that the policy manual only relates to official faculty, which does not include the beneficiary. Finally, counsel asserts that all "permanent" professional staff, including tenured faculty members, "serve pursuant to annual contracts." The petitioner submits a January 10, 2003 letter from Elizabeth Hecker, Director of Affirmative Action at the petitioning institution, asserting that the beneficiary was employed as a research professor from January 21, 2003 through January 20, 2004. The petitioner also submits a June 18, 2003 memorandum regarding a "permanent appointment." The terms of the job are not provided in the memorandum. Finally, the petitioner submitted the beneficiary's July 2003 and August 2005 employment contracts for a postdoctoral research associate position

¹ We note that the manual further provides that all nontenured faculty have fixed terms of employment and that reappointment of a faculty employment contract "is subject solely to the discretion of the University President."

and a research scientist position, respectively. Both contracts provide a specific term of employment and provide that the "length" or "type" of appointment is for 12 months. In addition, the 2005 contract specifies that it is not a tenure or tenure-track appointment.

We concur with the director that the ordinary meaning of an "offer" requires that it be made to the offeree, not a third party. Regulatory language requiring that the offer be made "to the beneficiary" would simply be redundant. Thus, a letter addressed to CIS is not a job offer within the ordinary meaning of that phrase. Nevertheless, a signed contract with the terms and conditions of the job can serve as sufficient alternative evidence.

The petitioner must establish the beneficiary's eligibility as of the date of filing, February 3, 2004. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*; 14 I&N Dec. 45, 49 (Comm. 1971). The petitioner has not offered the beneficiary a tenure or tenure-track position. Thus, the petitioner must demonstrate that the job offered is "permanent" as defined in the regulation at 8 C.F.R. § 204.5(i)(2), quoted above. The petitioner's personnel policies are not a consideration as the regulation defining permanent is binding on CIS.

The beneficiary's employment contracts for the postdoctoral research and research scientist positions both indicate that the position is for a fixed 12-month term. The record contains no evidence that reappointment at the petitioning institution is automatic without cause, as opposed to discretionary. Thus, the petitioner has not demonstrated that it has offered the beneficiary a "permanent" position as defined above.

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.