



U.S. Citizenship
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: DEC 02 2005
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IN RE: Petitioner: UNIVERSITY OF NOTRE DAME DU LAC
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.

Marj Johnson

Σ Robert P. Wiemann, Director
Administrative Appeals Office

DEC 02 05 - 01 B2203

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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 sustained and the petition will be approved.

The petitioner is a university. It seeks to classify the beneficiary as an outstanding professor 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 an assistant professor. The director determined that the petitioner had not established that it had offered the beneficiary a tenure-track job as of the date of filing. On appeal, the petitioner submits a statement.

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 failure in the regulations to require a job offer "addressed to the beneficiary" does not imply that a letter to the director can be considered a job offer. Such language would be redundant as an offer can only be made to an offeree.¹

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 "Faculty Contract for Assistant Professors" signed by the beneficiary and the petitioner's president on February 14, 2001 and a May 3, 2003 salary notification. The contract does not address whether the position is tenure-track or not and limits the term to three years. If the petitioner intends not to renew the contract, however, it must provide the beneficiary with twelve-months notice. 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 January 19, 2001 letter from [REDACTED] [REDACTED]. The letter advises the beneficiary that Professor [REDACTED] is recommending to the Provost that the beneficiary be offered a tenure-track assistant professorship.

The director denied the petition, concluding that the contract was for a specified term and did not indicate that the position was tenure or tenure-track. The director further concluded that the letter from Professor [REDACTED] was not an offer as it indicates that only the Provost can issue such an offer. The director concluded that the record lacked evidence that the Provost had accepted the recommendation to offer the beneficiary a tenure-track position.

On appeal, [REDACTED] [REDACTED] of the petitioning university, asserts that all assistant professor positions are tenure-track and that after the Chair of the department issues a job offer letter and it is accepted, the Provost's office executes the contract with the employee.

¹ ALM's online law dictionary, 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.)

We find the assertions on appeal persuasive. In response to the director's request for additional evidence, the petitioner submitted the initial evidence required by the regulations, a job offer. While the offer was subject to the final approval of the Provost, the petitioner submitted evidence of that approval in the form of an executed contract for the exact job position referenced in Professor [REDACTED]' letter. Unlike "permanent," "tenure-track" is not defined in the regulations. As such, we will accept the petitioner's definition of which positions constitute tenure track. Ms. [REDACTED] has satisfactorily established that assistant professor positions at the petitioning university are tenure-track positions. While the contract is for a term of three years, the requirement for an unlimited or indefinite term only applies to research positions. The record satisfactorily establishes that the petitioner hired the beneficiary as a tenure-track assistant professor. Thus, the petitioner has established that it has offered the beneficiary a qualifying job.

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.