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U.S. Citizenship
and Immigration
Services

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FILE:

[Redacted]
LIN 03 122 52049

Office: NEBRASKA SERVICE CENTER

Date: JAN 03 2005

IN RE:

Petitioner: [Redacted] ERN UNIVERSITY
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, 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 university. 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 permanently in the United States as a 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.

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 job would be permanent. [REDACTED] Director of the petitioner's International Office, signed the petition. The petitioner initially submitted a cover letter from Dr. [REDACTED] an assistant professor of medicine at the petitioning university. [REDACTED] asserts that the petitioner "wishes to employ [the beneficiary] in the professional research position of Senior Research Associate on a full time, permanent basis." [REDACTED] Director of the breast cancer research program at the petitioning university, asserts that the beneficiary "holds a full-time research position of unlimited duration with this institution." [REDACTED] Jameson, Chairman of the Department of Medicine at the petitioning university, asserts that the beneficiary "is currently a Senior Research Associate in the Department of Medicine at a salary of \$38,000 annually." He concludes that it is the university's "intention to have [the beneficiary] work for us on a permanent basis." An unsigned letter purportedly from [REDACTED] confirms that the beneficiary is the primary investigator for a research project funded by the National Institutes of Health (NIH).

On July 24, 2003, the director requested "a copy of the actual offer of employment made by [the petitioner] to [the beneficiary]." The director advised that an appointment letter would be acceptable. In response, the petitioner submitted a new letter from [REDACTED] asserts that he is "well acquainted with the University's intention to have [the beneficiary] work for us on a permanent basis, the duties she is expected to perform as a Senior Research Associate, and her compensation for executing those duties." While [REDACTED] further asserts that the petitioning university has offered the beneficiary "a full time research position," he also states, without explanation, that "no job formal job offer is available."

The director stated that the petitioner had not submitted a copy of an employment offer made by the petitioner to the beneficiary and concluded that the petitioner had not met the regulatory evidentiary requirement of submitting a letter offering the beneficiary a permanent research position in his academic field. The director noted the lack of evidence that the petitioning university, "as a matter of institutional practice, does not reduce offers of employment for tenure, tenure-track or comparable research positions to writing."

On appeal, counsel asserts that the beneficiary's current employment with the petitioner was one of the reasons why no formal written job offer was available. Counsel further asserts that the indication on the Form I-140 petition that the job was permanent in addition to the cover letter from [REDACTED] were sufficient evidence of a job offer. Counsel notes that the regulations require a job offer to be in the form of a letter from the employer and asserts that the letters from [REDACTED] and [REDACTED] "[s]enior staff members with hiring authority," conform to this requirement. Counsel asserts that the regulations do not require that the job offer be addressed to the beneficiary.

We agree with the director that an offer of employment must be from the petitioner to the beneficiary setting forth the title, terms and conditions of the position offered. We cannot conclude that a letter addressed to Citizenship and Immigration Services (CIS), or anyone other than the prospective employee, constitutes an "offer of employment" as the phrase is commonly understood.

Moreover, the record contains no evidence that the petitioning institution has authorized [REDACTED] to make legally binding offers of permanent employment. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). While [REDACTED] is clearly a high-level faculty member, the record lacks evidence that [REDACTED] has hiring authority for permanent research positions and that offers extended by him are binding on the university.¹ Regardless, [REDACTED] confirms only an intention to retain the beneficiary on a permanent basis. In his second letter, while [REDACTED] asserts that the petitioner holds a full-time position, he does not indicate that it is a permanent position. These assertions do not constitute a legally binding job offer, permanent or otherwise.

Finally, the fact that the petitioner was already employing the beneficiary at the time of filing is not a persuasive reason for the professed inability to provide a job offer letter. The petitioner indicates that the beneficiary would continue in the same position; thus, the original job offer letter for that position would be acceptable, providing it was for a permanent position. In fact, the director specifically advised the petitioner that an appointment letter would also be acceptable. Similarly, we would accept an employment contract for a current permanent position. The petitioner did not provide such documents. Dr. Jameson does not assert that the senior research associate position is permanent or that the beneficiary can only be terminated for cause.² The lack of a permanent job offer from the petitioner to the beneficiary is sufficient grounds for denial.

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.

¹ We were unable to confirm on the petitioner's website, www.northwestern.edu, that department chairs have hiring authority for research associates. The website contains a PDF benefits table indicating that only the Vice President of Research has appointment approval for research associate and senior research associate positions.

² We were unable to confirm on the petitioner's website, www.northwestern.edu, that senior research associate positions are permanent at the petitioning university. The petitioner's website includes a PDF benefits table indicating that the appointment terms for research associates and senior research associates is "limited to funding period of grant or contract."