

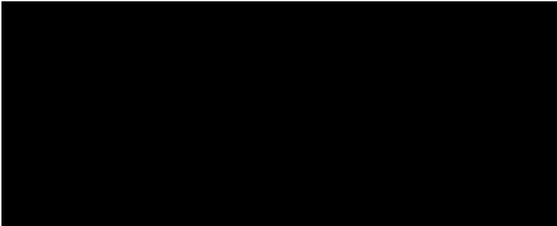


U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

B3



FILE: LIN 03 271 50584 Office: NEBRASKA SERVICE CENTER Date: OCT 07 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.

Mari 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 sustained and the petition will be approved.

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). The petitioner seeks to employ the beneficiary in the United States as a research assistant professor. 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 a reaffirmation of its job offer addressed to the beneficiary.

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 Professor Robert A. Linsenmeier, a professor at the petitioning university, addressed to Citizenship and Immigration Services (CIS), asserting that while not tenure-track, the beneficiary's position can only be terminated if "there is good cause for termination, i.e. such as lack of performance or lack of allocated funds." On October 1, 2004, the director requested a complete copy of the offer of employment by the petitioner to the beneficiary.

In response, the petitioner submitted a new letter from Professor Linsenmeier, reiterating that the beneficiary could only be terminated for cause or lack of allocated funds and explaining that the position of research assistant professor is for a term of indefinite or unlimited duration.

The director determined that the submission was not responsive, as it did not include a job offer letter addressed to the beneficiary. The director further concluded that the position was not permanent because it could be terminated for lack of allocated funds. On appeal, the petitioner submits a third letter from Professor Linsenmeier, this one addressed to the beneficiary reaffirming her position as a research assistant professor and affirming that the position cannot be terminated without "good cause." While the letter is dated after the date of filing, it reaffirms the same position the beneficiary already had at that time. Thus, it relates to the beneficiary's eligibility at that time.

First, we do not find that the director erred in requesting a job offer issued to the beneficiary. 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. Thus, we concur with the director that the ordinary meaning of an "offer" requires that it be made to the offeree, not a third party.

That said, however, the petitioner made a good faith effort to respond to what it understood to be the director's concerns in its response to the director's request for additional evidence. Thus, we will accept the job reaffirmation addressed to the beneficiary on appeal.

Finally, we concur with counsel that the reference to termination for lack of funding is not problematic. The job offer is not contingent on a specific grant, but on funding in general. We note that the director did not question the petitioner's ability to pay the beneficiary pursuant to the regulation at 8 C.F.R. § 204.5(g)(2). No appointment term is listed for the position and the reference to termination for "good cause" satisfactorily establishes that the job is not "at will." The record contains no inconsistencies or contradictions regarding the nature of the position offered. Thus, we are satisfied that the job offer is sufficiently permanent as defined in the regulations.

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.