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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[Redacted]

FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: AUG 24 2006
LIN 06 012 53010

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

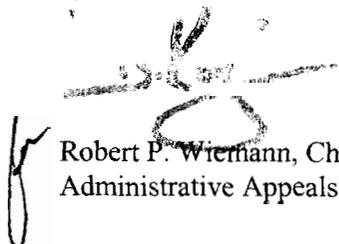
PETITION: Immigrant Petition for Alien Worker as Outstanding Professor or Researcher Pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(B)

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner is a public 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 in the United States as a senior research associate. The record reveals, however, that the petitioner had already offered the beneficiary a position as a research investigator as of the date of filing. 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, counsel submits a brief and a June 6, 2006 Interoffice Memorandum from Michael Aytes, Acting Director for Domestic Operations, Citizenship and Immigration Services (CIS).

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.

(Emphasis added.) 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.)

In light of the above, we concur with the director that the ordinary meaning of an "offer" requires that it be made to the offeree, not a third party. As such, regulatory language requiring that the offer be made "to the beneficiary" would simply be redundant. Thus, a letter addressed to CIS *affirming* the beneficiary's employment is not a job *offer* within the ordinary meaning of that phrase.

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 [REDACTED] addressed to CIS, asserting that the beneficiary "has been employed as a Senior Research Associate" but "is now being appointed as [a] Research Investigator," a faculty position. This document does not constitute a job offer from the petitioner to the beneficiary. On December 20, 2005, the director requested evidence that the petitioner had extended a permanent job offer to the beneficiary.

In response, the petitioner submitted a July 1, 2003 letter to the beneficiary offering the beneficiary a position as a senior research associate. The letter specifies that [REDACTED] can only provide salary support for two years, after which it "is our expectation" that the beneficiary would generate her own funding. The petitioner also submitted a letter dated October 10, 2005, addressed to the beneficiary advising her that she had been recommended for appointment as a research investigator, a "primary research track faculty" position. A final letter addressed to the beneficiary dated October 18, 2005, confirms the beneficiary's appointment as a Research Investigator.

The director concluded that the October letters postdated the September 30, 2005 filing date and that research associate position was not qualifying. On appeal, counsel asserts that the research associate position was permanent.

The 2003 job offer indicated that funding was only available for two years, a shorter period than for some nonimmigrant visas. Prior to the date of filing, however, the petitioner obtained a grant from the National Institutes of Health for Rhinovirus and COPD exacerbations listing the beneficiary as a co-investigator. Thus, the record establishes that the expectation of continued funding for the project is reasonable.

Moreover, the petitioner need only have offered the beneficiary a permanent position as of the date of filing, it need not have completed the appointment process. The initial petition was submitted with evidence that the petitioner had begun the process of appointing the beneficiary as a research investigator. Days later, the job offer for this position was reduced to writing and a few days after that the appointment was confirmed. As such, we are satisfied that the offer predated the filing of the petition.

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.