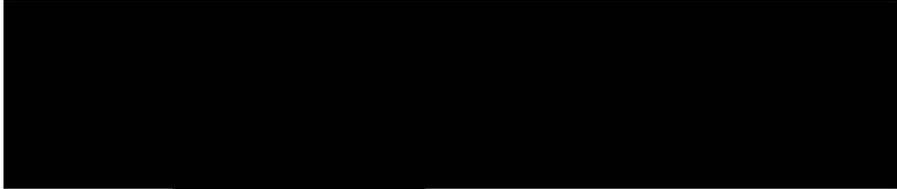


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FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: **SEP 14 2006**
LIN 05 049 50460

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:

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.

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 dismissed.

The petitioner is an institute of higher learning. 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 associate. 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). For the reasons discussed below, the petitioner has not overcome the director's decision by submitting the required initial evidence in this matter, a job offer issued to the beneficiary that predates the filing of the petition. Moreover, the record is inconsistent regarding the position actually held by the petitioner 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.

(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 Citizenship and Immigration Services (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], Dean of the College of Oceanic and Atmospheric Sciences at the petitioning institution, addressed to "Whom it May Concern," asserting that the petitioner was renewing the beneficiary's full-time appointment as a research associate. This document does not constitute a job offer from the petitioner to the beneficiary. The petitioner also submitted materials from the petitioner's website, printed August 2, 2004, that includes lists of "postdocs" and "research associates." The beneficiary is listed as a "postdoc." On June 2, 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 the beneficiary jointly signed by Dean [REDACTED] and [REDACTED] Vice Provost of Academic Affairs and International Programs. The letter, dated August 8, 2005, is issued "to clarify" the beneficiary's employment as a research associate.

The director concluded that the letter submitted in response to the request for additional evidence postdated the filing of the petition and was a clarification, not a job offer. The director further noted that the clarification indicates that the position is a renewable 12-month position.

On appeal, the petitioner submits the memorandum from Mr. Aytes and asserts that the petitioner has established its intention of employing the beneficiary long term. The petitioner does not submit the initial job offer predating the filing of the petition.

Nothing in the memorandum from Mr. Aytes implies that a petitioner need not submit a job offer issued to the beneficiary prior to the date of filing. Rather, the memorandum provides guidance as to how to evaluate the job offer. As discussed above, the job offer is initial required evidence. The petitioner has not explained why CIS should accept descriptions of the job offer in lieu of the job offer itself. The regulation at 8 C.F.R. § 103.2(b)(2) provides that a petitioner must demonstrate that primary evidence is unavailable or does not exist in order to rely on secondary evidence. The petitioner has not established that the primary evidence, the job offer, is either unavailable or does not exist.

Moreover, while the petitioner has asserted in November 2004 that it was *renewing* the beneficiary's appointment as a research associate, the website materials, printed in August 2004, indicate that he was only a "postdoc." It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has not resolved this inconsistency.

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.