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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: [REDACTED]
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Office: NEBRASKA SERVICE CENTER

Date: **MAY 19 2009**

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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, and reaffirmed that decision on motion. The matter is now before the Administrative Appeals Office (AAO) 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). According to the petition, 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 permanent job as of the date of filing.

On appeal, counsel submits a brief. For the reasons discussed below, we find that the petitioner has established that it offered the beneficiary a qualifying tenure-track position.

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 U.S. Citizenship and Immigration Services (USCIS) *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.

(Bold emphasis added.)

On Part 6 of the petition, the petitioner indicated that the proposed employment was a permanent position. The petitioner's initial cover letter, addressed to USCIS, asserted that the petitioner intended to employ the beneficiary as an assistant professor, a tenure-track teaching position. This document does not constitute a job offer from the petitioner to the beneficiary. On February 28, 2008, the director requested evidence that the petitioner had extended a permanent job offer to the beneficiary.

In response, the petitioner submitted the March 14, 2003 job offer from [REDACTED], Vice President for Academic Affairs, offering the beneficiary an instructor position (assistant professor rank if he completes his Ph.D. before September 1, 2003). The job offer advises that the job is a "probationary appointment" that is "on a tenure-seeking line." The maximum length of the "probationary" period is stated as seven years. The petitioner also submitted a letter from [REDACTED] University Director of International Employment, confirming that the petitioner had offered the beneficiary employment in the "tenure-track position of Assistant Professor." The director denied the petition, concluding that the petitioner has not submitted any evidence that "tenure-seeking" was the same as "tenure-track."

On motion, the petitioner submitted an affidavit from [REDACTED] Dean of the petitioner's School of Business, Public Administration and Information Sciences, advising that "tenure-seeking" is the same as "tenure-track," meaning that such positions and only those positions can lead to tenure. Dr. [REDACTED] advises that the petitioner has no personnel manual or administrative handbook. In addition, Dr. [REDACTED] provided a new letter confirming that the petitioner has offered the beneficiary a tenure-track position of assistant professor.

The director concluded that the petitioner had not provided any new evidence and dismissed the motion. On appeal, counsel notes that the petitioner did submit new evidence, the affidavit from Dr. [REDACTED] and the letter from [REDACTED]. Counsel is correct that the director failed to acknowledge or consider this evidence on motion.

The record establishes that the petitioner offered the beneficiary a tenure-track position in 2003 and that the beneficiary continues working as an assistant professor for the petitioner. The regulation at 8 C.F.R. § 204.5(i)(2) defines "permanent" as including tenure, tenure track, *or* for a term of indefinite or unlimited duration. Once the petitioner establishes that it has offered or employs the beneficiary in a tenure-track position, the petitioner has met its burden on this issue.

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.