

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W. MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

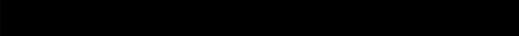


B3

Date: **SEP 14 2012** Office: NEBRASKA SERVICE CENTER

FILE: 

IN RE: Petitioner: 

Beneficiary: 

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO dismissed the petitioner's appeal. The matter is now before the AAO on motion to reopen/reconsider. The motion will be granted, the previous decision of the AAO will be affirmed, and the petition will remain denied.

The petitioner is a non-profit medical research organization. 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 permanently in the United States as a medical researcher in the field of traditional Chinese medicine. The director determined that the petitioner had not established that the beneficiary had attained the level of achievement required for classification as an outstanding researcher. In addition, the director determined that the petitioner did not establish that the beneficiary has at least three years of experience in teaching and/or research in the academic field, as required by the regulation at 8 C.F.R. § 204.5(i)(3). Further, the director concluded that the record lacks evidence that the petitioner has achieved documented accomplishments in the beneficiary's academic field. 8 C.F.R. § 204.5(i)(3)(iii)(C).

On appeal, the AAO concurred with the director's determination, finding that the record fails to establish that the beneficiary enjoys *international recognition*. The AAO found that the petitioner submitted qualifying evidence under only one of the required regulatory criteria, scholarly articles pursuant to 8 C.F.R. §§ 204.5(i)(3)(i)(F). Therefore, the AAO found the evidence submitted by the petitioner failed to establish that the beneficiary satisfies the antecedent regulatory requirement of two types of evidence. 8 C.F.R. § 204.5(i)(3)(i). The AAO also concurred with the director that the petitioner did not establish that the beneficiary has at least three years of experience in teaching and/or research in the academic field, and that the record lacks evidence that the petitioner has achieved documented accomplishments in the beneficiary's academic field. Beyond the decision of the director, the AAO also found the record lacks the actual job offer issued by the petitioner to the beneficiary, pursuant to 8 C.F.R. § 204.5(i)(3)(iii). Further, the AAO determined the petitioner has not established it employs the requisite three full-time researchers in addition to the beneficiary as required by section 203(b)(1)(B)(iii)(III) of the Act; 8 C.F.R. § 204.5(i)(3)(iii)(C).

On motion, counsel submits a brief asserting the decision of the AAO was in error. Accompanying the motion, the petitioner has submitted a positive letter of reference from [REDACTED] of the University of [REDACTED]. He states that he first met the beneficiary in May 2008 at the [REDACTED] and that "by utilizing her acupuncture skills, she has helped hundreds of patients to get recovered from periartthritis humeroscapularis, rheumatoid arthritis, coronary heart disease and prostatitis etc." The letter of reference does not identify an original research contribution made by the beneficiary to the academic field as a whole, or provide evidence of her recognition beyond her own circle of collaborators.

On motion counsel concedes that the petitioner has not submitted a job offer letter to the beneficiary, but asserts that, “by signing the I-140 form, the petitioner has displayed . . . its *willingness* to enter into a contract . . .”, and that the petitioner’s statements in the I-140 petition *confirm* its permanent job offer to the beneficiary, who has received a copy of the I-140 petition. In this regard, counsel’s assertions in the motion do not differ from his assertions on appeal. As stated in our previous decision, *Black’s Law Dictionary* 1189 (9th ed. 2009) 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” and defines “offeree” as “[o]ne to whom an offer is made.” In addition, *Black’s Law Dictionary* defines “offeror” as “[o]ne who makes an offer.” *Id.* at 1190. In light of the above, 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, the petitioner’s statements in the I-140 petition filed with United States Citizenship and Immigration Services are not an *offer* of employment within the ordinary meaning of that phrase. The record does not contain an offer of employment from the petitioner addressed to the beneficiary, which is required initial evidence pursuant to 8 C.F.R. § 204.5(i)(3)(iii).

On motion counsel also concedes, “the petitioner has not employed three full-time researchers in a traditional rigid sense”. Counsel states the petitioner “employs” a nine-person “research team,” consisting of Chinese medical scientists located in different parts of the world, none of whom are on the petitioner’s payroll. Thus, the petitioner has not established that it employs any members of the “research team.” Regarding its president [REDACTED], the petitioner has not provided a statement of his job duties to establish he is engaged in full-time research activities. Thus, the record does not establish that the petitioner employs the requisite three full-time researchers in addition to the beneficiary.

On motion counsel asserts that the petitioner’s documented accomplishments are comprised of the accomplishments of the “research team.” However, as stated above, the petitioner has not established that it employs any members of the “research team.”

Finally, it is noted that the unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

For evidence in support of counsel’s remaining assertions on motion (assertions which do not differ from his assertions on appeal that the evidence submitted by the petitioner established the beneficiary has at least three years of experience in teaching and/or research in the academic field, enjoys international recognition and satisfies the antecedent regulatory requirement of two types of evidence) counsel refers us to the documentation previously submitted into the record.

In this case, we concur with the director’s finding and our prior decision that the petitioner has failed to establish that the beneficiary enjoys international recognition or that she meets at least two of the criteria that must be satisfied to establish that she is an outstanding researcher. We

also concurred with the director's finding and our prior decision that the petitioner did not establish that the beneficiary has at least three years of experience in teaching and/or research in the academic field, and that the record lacks evidence that the petitioner has achieved documented accomplishments in the beneficiary's academic field. Further, we concur with our prior decision that the record lacks the actual job offer issued by the petitioner to the beneficiary, and the petitioner has not established it employs the requisite three full-time researchers in addition to the beneficiary. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(B) of the Act and the petition may not be approved.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The AAO's decision of March 29, 2010 is affirmed. The petition will remain denied.