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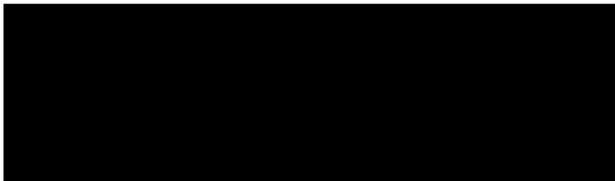


U.S. Citizenship  
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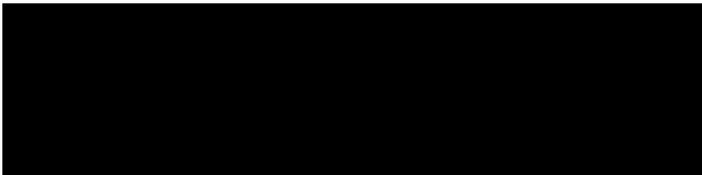
FILE: WAC 05 139 50031 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:  
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(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.

A handwritten signature in black ink that reads "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn. The petition will be remanded to the director for entry of a new decision.

The petitioner is a start-up company and states that it is an exporter of American canned goods to Southeast Asian countries. It seeks to employ the beneficiary as a director of international marketing and endeavors to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director determined that the petitioner did not qualify as a United States employer and accordingly denied the petition. On appeal, counsel submits a brief and additional information stating that the petitioner qualifies as a United States employer.

The petitioner is a California corporation. The beneficiary in this instance, purports to be the sole owner of that corporation. The director denied the petition stating that the petitioner could not qualify as an employer since it did not have an employer-employee relationship with respect to the beneficiary in this H-1B visa proceeding. Specifically, the director stated that the petition could not be approved because the petitioner did not have the ability to hire, fire or otherwise control the work of the beneficiary. The director reasoned that the beneficiary, the sole owner of the corporation, could not, in effect, hire or fire himself, and thus did not meet the definition of an employer. The director's reasoning is erroneous and his decision shall accordingly be withdrawn.

A corporation is a separate and distinct legal entity from its owners or stockholders. *See Matter of M*, 8 I&N Dec. 24, 50 (BIA 1958, AG 1958); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm. 1980); and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980).

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii), *United States employer* means a person, firm, corporation, contractor, or other association, or organization in the United States which:

- (1) Engages a person to work within the United States;
- (2) Has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and
- (3) Has an Internal Revenue Service Tax identification number.

United States employers seeking to classify an alien as an H-1B temporary employee shall commence proceedings by the filing of a Form I-129 Petition for Nonimmigrant Worker with the appropriate USCIS Service Center having jurisdiction in the area where the alien will perform services. As noted above, the petitioner corporation is a separate and distinct legal entity from its owners or stockholders. As such, its officers, directors, and employees are empowered to act in its name and behalf under the laws governing the formation and administration of corporations. The petitioner is legally permitted to engage in business and perform all other acts allowable under applicable law. As such, the petitioner is a legal entity that is permitted to file the Form I-129 on behalf of the beneficiary.

As a separate legal entity, the petitioner seeks to employ the beneficiary to perform services for it in the United States. The petitioner has the authority to hire the beneficiary, fire the beneficiary, and otherwise control his work. The fact that the petitioner is wholly owned by the beneficiary does not destroy or alter its distinct legal identity. Further, the record establishes that the petitioner has an Internal Revenue Service Tax identification number. The petitioner does, therefore, qualify as a United States employer under 8 C.F.R. § 214.2(h)(4)(ii). The director's decision to the contrary is withdrawn.

This matter must be remanded to the director to determine whether the proffered position qualifies as a specialty occupation, and if so, whether the beneficiary is qualified to perform the duties of a specialty occupation. It should be noted, however, that the duties of the proffered position appear to fall within those noted for marketing directors and related positions in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, and such positions do not generally qualify as specialty occupations under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) since a degree in a specific specialty is not required for entry into the position. The *Handbook* notes that degrees in a wide range of educational disciplines will suffice for entry into those positions.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for entry of a new decision commensurate with the directives of this opinion, which, if adverse to the petitioner shall be certified to the AAO for review.