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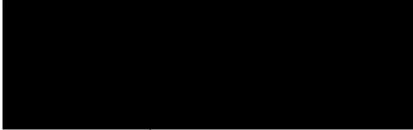
U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.

U.L.L.B. 3rd Floor
Washington, D.C. 20546

PUBLIC COPY



File: SRC-98-261-52776 Office: Texas Service Center

Date: 06 NOV 2001

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)

IN BEHALF OF PETITIONER:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

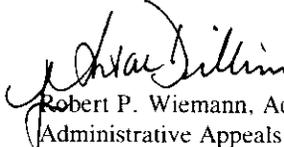
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a management services business that provides business and administrative support to its affiliated research companies. It has 15 employees and an undisclosed gross annual income. It seeks to employ the beneficiary as a polymer chemist for a period of three years. The director determined that the petitioner failed to establish that it had a specialty occupation available for the beneficiary. The director also noted that the record contained many discrepancies.

On appeal, counsel submits a brief.

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), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the petitioner had not demonstrated that a management company would have a position available for a polymer chemist. The director also noted the following discrepancies:

- * The petitioner's 1997 federal tax return indicates that its business was started on January 1, 1996, while information on the petition indicates that the petitioner was established in 1993;

- * The petitioner's 1997 federal tax return indicates that all of its income was from management fees, not from business conducted in a research lab or manufacturing plant as indicated on the petition;

* The petitioner's lease effective August 1, 1998, indicates that the premises are to be used for "medical research and development" rather than management activities;

* All but one of the photographs submitted by the petitioner were not identified;

* The documents submitted by the petitioner for BDI Systems, USA and KT Holdings, LLC do not mention the petitioner;

* As the petitioner's lease agreement was not effective until August 1998, the petitioner had not persuasively demonstrated that it had been engaged in research and/or manufacturing.

On appeal, counsel states in part that the petitioner was formed in 1996, based on an initial corporation formed in 1993, in Orlando, FL. Counsel also states that the petitioner is a fully owned subsidiary of KT Holdings, LLC, and provides business and administrative support services including payroll, accounting, insurance, leasing, and personnel matters for the operating companies of KT Holdings, LLC. Counsel further states that the beneficiary was hired by the petitioner to work primarily at Surface Tech, LLC, CCR Technologies, LLC, and Corrodere Technologies, LLC., and that BDI Systems is a potential customer only. Counsel submits the petitioner's old lease agreement with an effective date of January 1, 1996, and identified photographs of the petitioner's laboratories and offices.

In a letter dated September 15, 1998, counsel states in part that:

Petitioner [MK Industries, LLC] wishes to hire [the beneficiary]...for the full-time position of Research Chemist at its office located in Atlanta, Georgia.

Although information on the petition indicates that the petitioner is engaged in high technology, development, and manufacturing, the petitioner's 1997 federal income tax return reflects that its income is from management fees.

In his brief, counsel now states in part that:

...Petitioner clarified that MK Industries, LLC in Atlanta, Georgia is a management services company, not a research or manufacturing company. It provides "business and administrative support including payroll, accounting, insurance, leasing, and personnel matters..." [The beneficiary], as well as other researchers, was hired by MK Industries, LLC to work primarily in Surface Tech,

LLC, CCR Technologies, LLC, and Corrodere Technologies, LLC. MK pays the salary for [the beneficiary], and charges her time back to Surface Tech, Corrodere, CCR, or any other research affiliate for whom she works. These affiliates file their independent tax returns, and count [the beneficiary's] time as a research cost.

The record indicates that the petitioner, KT Holdings, LLC and its eight operating companies all have the petitioner's address. It appears from the photographs submitted that each operating company may occupy some laboratory space within the petitioner's 14,490 square feet of lease space. In a letter dated January 8, 1998, the petitioner's director of human resources states in part that the research affiliates where the beneficiary is to work are legally organized companies who file independent tax returns. She further states that the petitioner holds the lease and passes lease-related costs to affiliated research companies on a pro-rated basis. She additionally states that all of the companies are affiliated through common ownership, either through KT Holdings, LLC or by Dr. Mohammad Katoot, who is the chairman and holds controlling interest in each of the companies.

The record contains certificates of organization for three of the operating companies where the beneficiary is to perform research duties. The record indicates that ten independent businesses (including MK Industries, LLC, KT Holdings, LLC, Surface Tech, LLC, MedCom Fiberoptics, Inc., Cell Separation Technologies, LLC, Target Pharmaceuticals, LLC, CCR Technologies, LLC, Corrodere Technologies, LLC, Pyretard, LLC, and MicroPoly Technologies, LLC) operate at the petitioner's address though only the petitioner appears on the lease. Though the petitioner's director of human resources states that the petitioner passes lease-related costs to the affiliated research companies, the record contains no evidence of such. The record also contains no evidence of the affiliates' independent tax returns. As the record indicates that the beneficiary is to perform her services at companies that do not appear on any lease, the petitioner has not persuasively established that a position for the beneficiary in a specialty occupation actually exists.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies will not suffice. Matter of Ho, 19 I&N Dec. 582. (Comm. 1988).

In view of the foregoing, it is concluded that the petitioner has not demonstrated that the proffered position is a specialty occupation within the meaning of the regulations.

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 decision of the director will not be disturbed.

ORDER: The appeal is dismissed.