



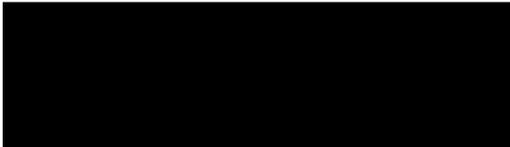
D2

U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: WAC-00-269-51632 Office: California Service Center Date: 19 DEC 2002

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:



PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

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 that 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 that 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, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the petition will be remanded for further consideration and action.

The petitioner is a new company engaged in the import and export of computers and equipment with one employee. It seeks to employ the beneficiary as a marketing coordinator for a period of three years. The director determined that the petitioner is both the petitioner and the beneficiary and, therefore, the petitioner does not meet the definition of "United States employer" set forth at 8 C.F.R. 214.2(h)(4)(ii).

On appeal, counsel states that the beneficiary is the petitioning company's owner and sole employee. Counsel further states that, under well-established law, a corporation is a separate entity that has an existence and obligations separate and apart from its shareholder(s). Counsel asserts that there is nothing in the regulations prohibiting the filing of an H-1B petition on behalf of an alien who has an ownership interest in the petitioning corporation.

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.

8 C.F.R. 214.2(h)(4)(ii) defines the term "United States employer" as follows:

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.

In this case, the petitioning entity, Searchlight Technology, is a corporation owned by the beneficiary, Hyung Jin Kim. The director's finding that the petitioner did not meet the definition of "United States employer" is erroneous. A corporation is a separate and distinct legal entity from its owners or stockholders, able to employ them and petition on their behalf. Matter of M, 8 I & N Dec. 24 (B.I.A. 1958; A.G. 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). The beneficiary's ownership of the petitioning company does not preclude the petitioner from being able to file this nonimmigrant petition in the beneficiary's behalf. In view of the foregoing, the basis for the denial of the petition has been overcome.

The director has not determined whether the proffered position is a specialty occupation or whether the beneficiary qualifies to perform services in a specialty occupation. Accordingly, the matter will be remanded to the director to make such a determination and to review all relevant issues. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

ORDER: The decision of the director is withdrawn. The matter is remanded to him for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for review.