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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

JUN 25 2003

File: SRC-01-225-60020

Office: TEXAS 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 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 Bureau of Citizenship and Immigration Services (Bureau) 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a consultancy and software development business with eight employees and a gross annual income of \$700,000. It seeks to extend its authorization to employ the beneficiary as a systems consultant, programmer, and business analyst for an approximate period of three years. The director denied the petition because an investigation by the Bureau revealed that the petitioner had misrepresented material facts.

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 of the following:

- The petitioner misrepresented a material fact in that it was inactive in Texas for failure to pay its franchise tax, had not reported any employees as required, and had used the same social security number for five of its employees in the fourth quarter of 2000;
- The petitioner submitted approximately 15 petitions with several different addresses – a visit to such addresses by Bureau personnel failed to locate the

petitioner or anyone who had knowledge of the petitioner.

On appeal, counsel submits documentation to demonstrate that the petitioner is a legitimate business, in good standing with the Texas Comptroller.

The record contains the following:

- A report dated April 11, 2002, by a Bureau officer who states, in part, as follows:

A check with the Texas Workforce Commission (TWC) revealed that [the petitioner] has not reported a salary for . . . [the beneficiary] until the 4th quarter of 2000 Also, reflected in the report was the fact that (5) five individuals to include . . . [the beneficiary] used the same SSAN number when reporting their salary to the TWC

- A report dated April 12, 2002, by the same Bureau officer who states, in part, as follows:

Operations has contacted the [TWC] and verified that [the petitioner] is paying [the beneficiary] the wage that is listed on the I-129 petition and that he is working in the Dallas, TX area as stated in the LCA and I-129.

The company also provided to Operations a list of H-1B visa holders that are no longer employed by the company and requested that those by [sic] withdrawn.

The company is now in active status with the [TWC] and is authorized to conduct business. When questioned about the company work location it was determined that they moved from their office location to the president's residence do [sic] to lack of work, but they intend shortly to move into a [sic] office building.

On appeal, counsel submits the following:

- A bill addressed to the petitioner dated July 16, 2001, from Healthplan Services, Inc., with the beneficiary's

name, reflecting that the petitioner was over-due on his payments;

- A Consultancy Agreement between the petitioner and Cable & Wireless Global, Ltd. Dated July 25, 2000;
- A Certificate of Organization for the petitioner dated March 2, 1998;
- Financial statements and tax returns for the petitioner, dated December 31, 2000;
- Certificate of Account Status from the Texas Comptroller of Public Accounts, dated August 17, 2001, stating, in part, that the petitioner "is, as of this date, in good standing with this office having no franchise tax reports or payments due at this time.";
- Quarterly tax report signed by the petitioner's president on April 5, 2002; and
- An expired lease for the petitioner at [REDACTED] signed on August 7, 1998.

The additional documentation submitted by counsel has been reviewed. Counsel, however, does not address all of the director's concerns, such as why the petitioner used the same social security number for five of its employees in the fourth quarter of 2000. Furthermore, counsel does not provide a current lease for the petitioner. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. 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, 591-92 (BIA 1988). In view of the foregoing, the petitioner has not overcome the objections of the director, and the petition therefore may not be approved.

Beyond the decision of the director, the petitioner has not demonstrated that a specialty occupation exists for the beneficiary. As this matter will be dismissed on the grounds discussed, this issue need not be examined further.

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.

ORDER: The appeal is dismissed.