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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

[REDACTED]

File: SRC-01-063-50595

Office: TEXAS SERVICE CENTER

Date: MAY 9 2003

IN RE: Petitioner:  
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)

ON BEHALF OF PETITIONER:

[REDACTED]

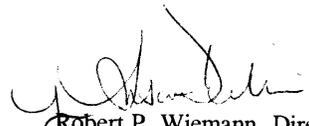
**INSTRUCTIONS:**

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, a new business, is an engineering consulting firm. Information on the petition reflects that it has no employees or gross annual income. It seeks to employ the beneficiary as a systems engineer consultant for a period of three years. The director determined that as the petitioner and the beneficiary are the same person, the petitioner had not established that an employer/employee exists. The director further found that as the petitioner's claimed place of employment is his apartment, a valid place of employment does not exist.

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.

On appeal, counsel states, in part, that an employer/employee relationship clearly exists as demonstrated by the petitioner's stock certificates. Counsel further states that such certificates demonstrate that the beneficiary is the petitioner's minority shareholder, and that the petitioner's majority shareholder has the majority voting rights with the power to hire, fire, and supervise the beneficiary. Counsel additionally states that the petitioner/beneficiary holds an occupational license to conduct business at the address reflected on the petition.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii), a United States employer is defined 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.

The record contains share certificate #001 for [REDACTED] showing that the beneficiary is the owner of 200 shares, and share certificate #002 showing that [REDACTED] is the owner of 800 shares. The record is sufficient in establishing that the petitioner has been incorporated and, therefore, is a separate and distinct legal entity with authority to hire, pay, fire, supervise, or otherwise control the work of the beneficiary. Therefore, an employer-employee relationship has been shown to exist between the petitioner and the beneficiary. As such, the petitioner has overcome this portion of the director's objections.

The record also contains an "Orange County Occupational License," filed on September 10, 2001, and addressed to the petitioner and beneficiary for "computer consulting" and "1 worker." It is noted that the filing date of the instant petition is December 15, 2000. Pursuant to 8 C.F.R. § 103.2(b)(12), an application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed. As the petitioner's "Orange County Occupational License" was obtained after the filing date of the instant petition, the petitioner has not established that at the time of the filing of the instant petition, a valid place of employment existed and, therefore, the petitioner has not overcome this portion of the director's objection. For this reason, the petition may not be approved.

Beyond the decision of the director, Bureau regulations specifically allow a director to request additional evidence in appropriate cases, as the Bureau may reasonably inquire about a job contract between a petitioner and its client if a beneficiary

will be performing services at client sites. See 8 C.F.R. § 103.2(b)(8). Although the record contains a letter dated September 27, 2001, from a business "expressing interest" in the petitioner's services, absent a contract of a project where the beneficiary would work and a comprehensive description of the proposed duties from an authorized representative of such business, the petitioner has not persuasively demonstrated that a specialty occupation exists for the beneficiary, or that it has complied with the terms of the labor condition application. In addition, although the record contains an evaluation of the beneficiary's work experience stating that his 22 years of work experience are equivalent to a bachelor of science degree in computer science from an accredited American-based educational system, the record does not contain any evidence that the evaluator is an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). As this matter will be dismissed on the grounds discussed, these issues 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. Accordingly, the decision of the director will not be disturbed.

**ORDER:** The appeal is dismissed.