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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536

[redacted]

NOV 13 2003

FILE: SRC-02-212-50085 OFFICE: TEXAS SERVICE CENTER DATE:

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)

IN 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 Citizenship and Immigration Services (CIS) 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 Director of the Texas Service Center denied the nonimmigrant visa petition and certified the decision to the Administrative Appeals Office (AAO) for review. The director's decision shall be affirmed. The petition will be denied.

The petitioner is a business that provides services in relocation, business planning, and consulting. It has no employees, and has an undisclosed gross annual income. It seeks to employ the beneficiary as a business administrator/relocation planning consultant. The director denied the petition because the petitioner failed to establish the existence of an employee/employer relationship.

On notice of certification, counsel submits a copy of previously submitted documents.

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 for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed is whether the petitioner can be considered the beneficiary's employer. According to evidence in the record, the beneficiary owns the petitioning entity.

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;

(3) Has an Internal Revenue Service Tax identification number.

Along with the initial I-129 petition, the petitioner submitted a copy of its business plan. The business plan states that [redacted] a [redacted] was incorporated in May 2002.
On July 10, 2002, the director requested that the petitioner submit convincing evidence of an employer/employee relationship, given that the petitioner is also the beneficiary of the petition.

In response to the request, the petitioner submitted: two Board of Immigration Appeals cases; a document from the National Immigration Project of the National Lawyers Guild; two Internet

pages that describe limited liability companies in Florida; and Solutions' operating agreement.

On August 21, 2002, the director denied the petition. The director found that the petitioner failed to establish that the employee/employer relationship existed as defined under the regulations. The director stated that, because the beneficiary is the owner and sole employee of the petitioning entity, the ability to hire, fire, supervise, and otherwise control the work of the employee cannot exist where the employee is also the employer.

On appeal, counsel submits copies of the petitioner's previously submitted documents. As stated in her response to the director's request for evidence, counsel asserts that, under the Board of Immigration Appeal cases *Matter of Allan Gee, Inc.* 17 I&N Dec. 296 (Reg. Comm. 1979) and *Matter of M,* 8 I&N Dec. 24 (BIA 1958), the petitioner has established that an employer/employee relationship exists because a corporation is considered a separate legal entity from its shareholders. Moreover, in the response, counsel maintained that the document from the National Immigration Project of the National Lawyers Guild cites *Matter of Allan Gee* when it states "a corporation wholly owned by the beneficiary can file an H-1 petition for the beneficiary, as the corporation and the petitioner are separate legal persons."

The petitioner has failed to establish that Solutions, a limited liability company (LLC), qualifies under 8 C.F.R. § 214.2(h)(4)(ii) as a United States employer. The petitioning entity is a limited liability company; it is not a corporation. A corporation is a separate and distinct legal entity from its owners or stockholders. *See Matter of M,* 8 I&N Dec. 24 (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). Moreover, *Matter of Allan Gee, Inc.* and *Matter of M* do not support counsel's assertion that an employer/employee relationship exists. In these cases, an employer/employee relationship existed because a corporation, not a limited liability company, was considered a separate legal entity from its shareholders. In this proceeding, the record establishes that Solutions is a limited liability company. Thus, under 8 C.F.R. § 214.2(h)(4)(ii), the petitioning entity does not qualify as a United States employer because it fails to establish an employee/employer relationship as described under the regulation.

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. The petition is denied.