



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

FILE: EAC 03 023 51108 Office: VERMONT SERVICE CENTER Date: AUG 9 1 2004

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)

ON BEHALF OF PETITIONER:  
[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

*Robert P. Wiemann*  
to Robert P. Wiemann, Director  
Administrative Appeals Office

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

The petitioner is a software design, systems analysis, and development business that seeks to employ the beneficiary as a systems/software analyst. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the proffered position is primarily for the purpose of self-employment. On appeal, counsel submits a brief.

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 director found that the beneficiary is one of the petitioner's two owners and is also the petitioner's president. The director further found that proffered position is primarily for the purpose of self-employment. On appeal, counsel states, in part, that the petition should be approved, as the director's decision disregarded established precedent. In support of his statement, counsel cites various published and unpublished decisions, including *Matter of M*, 8 I&N Dec. 24 (BIA 1958; AG 1958) and *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm. 1980).

The record, as it is presently constituted, does not contain a copy of the petitioner's Articles of Incorporation or other evidence to demonstrate that the petitioner is an incorporated business and, therefore, a separate legal entity. As such, the petitioner has not demonstrated that an employer-employee relationship exists between the petitioner and the beneficiary. See *Matter of M*, *id*; *Matter of Aphrodite Investments Limited*, *id*; and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). As such, the petitioner has not overcome the director's objection.

Beyond the decision of the director, it is not clear whether the beneficiary will perform her duties at the petitioner's client, Kforce, which is a full-service staffing firm, or at the site of one of Kforce's clients. The petitioner must specify where the beneficiary will perform the duties of the proffered position, and the record must contain a comprehensive description of the beneficiary's proposed duties from an authorized representative of the business where the beneficiary will ultimately perform the proposed duties. Without such a description, the petitioner has not demonstrated that the proffered position meets the statutory definition of specialty occupation. Furthermore, although Kforce is located in Tampa, Florida, the petitioner's labor condition application contains a Plainsboro, New Jersey address. As such, the petitioner has not demonstrated that a labor condition

application has been properly filed for the location of the beneficiary's intended employment or that the petitioner has complied with the terms of the labor condition application that was certified by the Department of Labor on October 25, 2002. It is additionally noted that, as Kforce is located in Tampa, Florida, and the petitioner is located in Princeton, New Jersey, it is unclear whether the petitioner would be able to hire, fire, supervise and control the beneficiary within the meaning of 8 C.F.R. § 214.2(h)(4)(ii). For these additional reasons, the petition may not be approved.

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.