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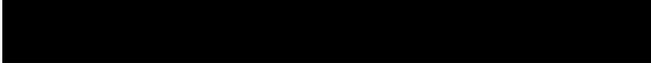


U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 148 53211 Office: CALIFORNIA SERVICE CENTER Date: **JAN 18 2006**

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 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, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn. The petition will be remanded.

The petitioner is a wholesale manufacturer of hygiene products that seeks to employ the beneficiary as an industrial engineer. 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 petitioner has not established that it is a United States employer. On appeal, counsel submits a letter, a brief signed by the petitioner, and supporting documentation discussed below.

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.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) 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 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or

- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an industrial engineer. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's March 29, 2004 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: implementing quality control measures for the petitioner's hygiene product manufacturing activities; working with and modifying several machines utilized in the production process and developing standardized manufacturing methods for using these machines; developing cost analysis production scheduling and work evaluation programs; performing manufacturing time analysis studies; drawing and designing equipment; documenting work space for maximum efficiency of work flow; providing detailed estimations of material costs; and evaluating product data and design performance in relation to industrial engineering principles, customer requirements, and quality standards. Although not explicitly stated, it appears that the petitioner requires a baccalaureate degree or its equivalent in industrial engineering for the proffered position.

The director found that the petitioner had not demonstrated that it had a building from which to operate or that it is actually operating. The director found further that the business name and the Employer Identification Number reflected on the income tax return submitted by the petitioner are inconsistent with the petitioner's name and Employer Identification Number.

On appeal, counsel provides evidence of the petitioner's various name changes, which he states were necessary due to trademark similarities with other companies. Counsel states, in part:

It is contended that the petitioner has sustained the burden of proof in establishing that it is a bona fide employer because it has demonstrated that it has engaged a person to work within the United States, it has an employer-employee relationship with the beneficiary and has a tax identification number. . . . It should be further noted that since the final amendment to its Articles of Incorporation, Ideal Brands, Inc. has filed corporate filings, registered with the Federal Trade Commission, obtained a UCC Code Prefix from the Uniform Code Council, developed a company logo and designed a website using the current name, Ideal Brands, Inc., indicating that the issues regarding the company's name have been resolved.

On appeal, the petitioner's owner also states:

Ideal Brands, Inc. has a valid Federal Tax Identification ~~#47-0861762~~ as per evidence presented. This Federal Tax I.D. is accurate and corresponds with the name of petitioner Ideal Brands, Inc.

The record contains the following documentation related to the petitioner's business:

- Certificate of Amendment of Articles of Incorporation, dated February 20, 2003, amending the petitioner's name to Ideal Brands, Inc.;
- IRS document, dated August 31, 2004, verifying the petitioner's Employer Identification Number (EIN) as [REDACTED];
- Letter, dated August 25, 2004, from a New York law firm explaining that the petitioner's name changes were due to possible infringements upon the rights of third parties;
- Stock Certificates Nos. 1 and 2, dated March 31, 2003, reflecting that Behzad Bekhrad and Mehrdad Bekhrad are holders of 100,000 shares, respectively, of the 10,000,000 common shares of the authorized capital stock of Ideal Brands, Inc.;
- Inventory list, telephone bill, and business letters addressed to the petitioner;
- Photos of the petitioner's premises;
- Undated Buyer's Closing Statement for the property at: 1451 Mirasol St., Los Angeles, California; and
- Federal income tax returns and bank statements.

The record contains a Certificate of Amendment of Articles of Incorporation, dated February 20, 2003, showing 200,000 outstanding shares, and Djamshid Bekhrad as the petitioner's president and Mehrdad Bekhrad as the petitioner's secretary. The petitioner is an incorporated business and, therefore, a separate legal entity. The record also contains an IRS document, dated August 31, 2004, verifying the petitioner's Employer Identification Number (EIN) as [REDACTED]. It is noted that, although the director found discrepancies in the business name and the Employer Identification Number reflected on the income tax return submitted by the petitioner at the petition's filing, the petitioner's vice president explains in his March 29, 2004 letter that such tax return is that of another business "L.A. Century Textile," of which he and his brother have maintained a combined 50% ownership interest. The record also contains a letter indicating that the petitioner intends to employ the beneficiary as an industrial engineer. Therefore, an employer-employee relationship has been shown to exist between the petitioner and the beneficiary. 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). As such, the petitioner has overcome this portion of the director's objections.

The petition may not be approved, however, because the location of the petitioner's manufacturing facility is in doubt. The address on the petitioner's undated buyer's closing statement reflects the address of the petitioner's manufacturing facility as: 1451 Mirasol St., Los Angeles, California, rather than the address that is reflected on Part 5 of the petition and further cited in the petitioner's October 8, 2004 letter submitted on appeal: 1513 Mirasol St., Los Angeles, California. Further, the letter from Mitch Larson, P.E., President of MESH Engineering, Inc., indicates that he visited Ideal Brands' future plant location at 1513 Mirasol in Los

Angeles and during a two-day visit completed machinery layout drawings and electrical requirements needed to complete the plant preparations for machinery that was on order.¹

The record, however, contains no explanation for this inconsistency. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Accordingly, the AAO shall not disturb the director's denial of the petition.

As the record contains adverse information which is unexplained in the record, the petition will be remanded in order for the director to determine whether the petitioner has commenced business as indicated in the planning documents. The petitioner should establish that it is actively engaged in the manufacture of hygienic products, or that it has made substantial progress toward the opening of the business as indicated by the letter from Mitch Larson, and that it will employ the beneficiary in a specialty occupation. The director should also determine whether the position offered is a specialty occupation, and whether the beneficiary is qualified to perform the services of a specialty occupation. The director must afford the petitioner a reasonable time to address the inconsistencies in the record, and to establish that Ideal Brands, Inc. will employ the beneficiary in a specialty occupation.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's August 9, 2004 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.

¹ A Google search of the address: 1513 Mirasol St., Los Angeles, indicates that it is the premises of Nordwin's Furniture Company.