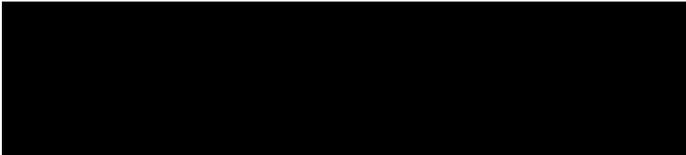




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FILE: WAC 05 241 50397 Office: CALIFORNIA SERVICE CENTER Date: JUN 25 2007

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:

SELF-REPRESENTED

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The director of the service center 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 professional registry and staffing agency that seeks to employ the beneficiary as an elementary teacher. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to 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). The director denied the petition based on his determination that the petitioner did not establish that it qualifies as either a U.S. employer or agent, and that the petitioner failed to submit an itinerary.

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

In his denial, the director found that the petitioner had not established that it qualifies as the beneficiary's employer pursuant to 8 C.F.R. § 214.2(h)(4)(ii). The director found further that the petitioner had not submitted a complete itinerary for the beneficiary to establish that it qualifies as an agent, in accordance with 8 C.F.R. § 214.2(h)(2)(i)(F).

On appeal, the petitioner's president states, in part, that the petitioner, which is an employment registry for a variety of professionals and manpower in various professional occupations, qualifies as either a U.S. employer or agent. She references an employment commitment between the petitioner and [REDACTED] and the beneficiary, and teaching services agreements between the petitioner and [REDACTED] in Baldwin Hills, CA, dated September 7, 2004, and between the petitioner and [REDACTED] [REDACTED] in Inglewood, CA, dated March 2, 2005. She states further: "Petitioner-appellant has [a] definite employment commitment with the alien-beneficiary for the particular position of Elementary Teacher, regardless of whether or not she will be actually placed to an educational institution for the period of employment requested in the Form I-129 and in the Labor Condition Application."

Upon review of the record, the petitioner has not established that an employer-employee relationship exists between the petitioner and the beneficiary.

The AAO first turns to the issue of whether or not the petitioner would be the beneficiary's employer. 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; and
- (3) Has an Internal Revenue Service Tax identification number.

To qualify as a United States employer, all three criteria must be met. The Form I-129 indicates that the petitioner has an Internal Revenue Service Tax Identification Number. However, despite the director's specific request that the petitioner provide evidence of its past employment practices showing that it routinely met the conditions of the employment of its employees, and that it always fully paid its employees, the petitioner did not submit payroll-related evidence for the seven employees claimed on the petition and/or to [REDACTED] and [REDACTED] the H-1B employees listed on the petitioner's I-797C, Notice of Action, forms. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In view of the foregoing, the petitioner has not demonstrated that it would have an employer-employee relationship with the beneficiary with the authority to hire, pay, fire, supervise, or otherwise control the work the beneficiary would perform.

The AAO also finds that the petitioner has not established that it has met the regulatory requirements as an agent for the beneficiary. Pursuant to 8 C.F.R. § 214.2(h)(2)(i)(F):

A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act on its behalf. A United States agent may be: the actual employer of the beneficiary, the representative of both the employer and the beneficiary, or, a person or entity authorized by the employer to act for, in place of, the employer as its agent. A petition filed by a United States agent is subject to the following conditions;

- (1) An agent performing the function of an employer must guarantee the wages and other terms and conditions of employment by contractual agreement with the beneficiary or beneficiaries of the petition. The agent/employer must also provide an itinerary of definite employment and information on any other services planned for the period of time requested.
- (2) A person or company in business as an agent may file the H petition involving multiple employers as the representative of both the employers and the beneficiary or beneficiaries if the supporting documentation includes a complete itinerary of services or engagements. The itinerary shall specify the dates of each service or engagement, the names and

addresses of the actual employers, and the names and addresses of the establishment, venues, or locations where the services will be performed. In questionable cases, a contract between the employers and the beneficiary or beneficiaries may be required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

- (3) A foreign employer who, through a United States agent, files a petition for an H nonimmigrant alien is responsible for complying with all of the employer sanctions provisions of section 274A of the Act and 8 CFR part 274a.

The AAO determines that the petitioner has not complied with the regulatory requirements for an agent in that it has failed to submit an itinerary of services or engagements. The petitioner's teaching services agreements with [REDACTED] and [REDACTED], are noted. Also noted is the petitioner's president's assertion that the petitioner "has [a] definite employment commitment with the alien-beneficiary for the particular position of Elementary Teacher, regardless of whether or not she will be actually placed to an educational institution for the period of employment requested in the Form I-129 and in the Labor Condition Application." While the petitioner may have a definite employment commitment with the beneficiary, it is not relieved of its regulatory obligation to provide an itinerary of services or engagements as the agent on an H-1B petition.<sup>1</sup>

Therefore, the petitioner has failed to establish that it meets the regulatory requirements for an agent of an H-1B petition.

The record contains evidence that CIS has approved other H-1B petitions for the petitioner in the past. This record of proceeding does not, however, contain all of the supporting evidence submitted to the service center in the prior cases. In the absence of all of the corroborating evidence contained in those records of proceeding, the documents submitted by the petitioner are not sufficient to enable the AAO to determine whether the other H-1B petitions were approved in error.

Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior approvals were erroneous, no such determination may be made without review of the original records in their entirety. If the prior petitions were approved based on evidence that was substantially similar to the evidence contained in this record of proceeding that is now before the AAO, however, the approval of the prior petitions would have been erroneous. CIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of*

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<sup>1</sup> The AAO notes that the employer of a beneficiary who will work in multiple locations is also required to submit an itinerary of services with the dates and locations of services. 8 C.F.R. § 214.2(h)(2)(i)(B).

*Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied*, 485 U.S. 1008 (1988).

As related in the discussion above, the petitioner has not established that an employer-employee relationship exists between the petitioner and the beneficiary. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, as the petitioner has not submitted a description of employment from the ultimate work location, the petitioner has not established that the proposed position qualifies as a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(A) or that the beneficiary would be coming temporarily to the United States to perform the duties of a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(1)(B)(1). 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.