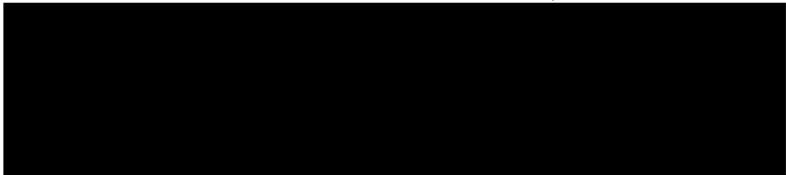




U.S. Citizenship  
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Services

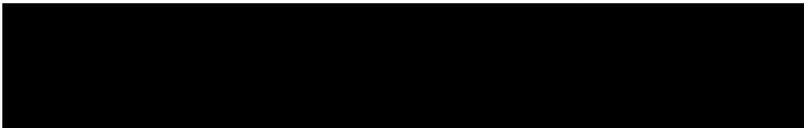
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FILE: WAC 05 119 52194 Office: CALIFORNIA SERVICE CENTER Date: NOV 01 2007

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:

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, California Service Center, denied the nonimmigrant visa petition. The matter is now before the AAO. The appeal will be sustained. The petition will be approved.

The petitioner is an organization incorporated in the State of California in June 2003. It seeks to employ the beneficiary as an attorney. Accordingly the petitioner endeavors to classify the beneficiary as a nonimmigrant 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 found that the relationship between the beneficiary and the petitioner is unclear. The director observed that as the beneficiary was the sole shareholder of the petitioner when the petition was filed March 30, 2005, the petitioner could not establish that it had the ability to hire, pay, fire, supervise, or otherwise control the work of the beneficiary as its employee. The director determined that the petitioner did not qualify as an employer at the time the petition was filed and denied the petition.

On appeal, the petitioner asserts that when the petition was filed, the petitioner was a corporation, a separate legal entity existing independently from its shareholders. The petitioner notes further that it continues to be a corporation and active in the State of California. The petitioner references previous AAO decisions holding that when a corporation files an H-1B petition on behalf of its sole owner and employee, the petition must be approved. The petitioner claims that it is a *bona fide* employer and that it has complied with all current regulations and precedent decisions; thus, the director's error in denying the petition must be overturned.

The record of proceeding before the AAO contains: (1) the March 30, 2005 Form I-129 with supporting documentation; (2) the director's July 2, 2005 notice of intent to deny (NOID); (3) the petitioner's July 29, 2005 response to the director's NOID; (4) the director's denial letter; and (5) the Form I-290B with the petitioner's brief. The AAO reviewed the record in its entirety before issuing its decision.

The AAO finds in this matter that the petitioning corporation is a separate and distinct legal entity from its owners or stockholders. See *Matter of M*, 8 I&N Dec. 24, 50 (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, a corporation, even if is owned and operated by a single person, may hire that person, and the parties will be in an employer-employee relationship. The beneficiary's relationship to the petitioner is not a proper basis for denying the petition.

The record reflects that the beneficiary will be performing the duties of a specialty occupation, holds the equivalent of a Juris Doctorate degree from a regionally accredited college or university in the United States, and is licensed to practice law in the State of California. Thus, the beneficiary is qualified to perform the services of the specialty occupation.

The burden of proof in these proceedings rests solely with the petitioner. See Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

**ORDER:** The appeal is sustained. The director's decision is withdrawn and the petition is approved.