

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

D2



FILE: WAC 07 008 50752 Office: CALIFORNIA SERVICE CENTER Date: **AUG 04 2008**

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:



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 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 termite control business that seeks to extend its authorization to employ the beneficiary as a market research analyst. 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 determining that the petitioner had not complied with the requirement at 8 C.F.R. § 214.2(h)(4)(iii)(B)(1), pertaining to the labor condition application (LCA).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,
2. A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay,
3. Evidence that the alien qualifies to perform services in the specialty occupation. . . .

On appeal, counsel asserts that the petitioner has demonstrated extraordinary circumstances beyond its control that precluded a timely filing of the LCA.

A June 2, 2008 search of the California Business Portal's website found the petitioner's status reported as "dissolved." Thus, counsel was requested to submit evidence that the petitioner is operating as a legal entity.

On June 6, 2008, counsel responded as follows:

Due to the economic recession and the housing bubble burst, the petitioner is no longer in business. It was however in business at the time the extension was filed. The AAO is requested to continue the adjudication as this will directly bear on the beneficiary's maintenance of status.

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.

Pursuant to 8 C.F.R. § 214.2(h)(11)(ii), the approval of any petition is automatically revoked if the petitioner goes out of business or files a written withdrawal of the petition.

As the petitioner in the instant petition is no longer in business, it does not qualify as a U.S. employer under 8 C.F.R. § 214.2(h)(4)(ii). Moreover, the petition may not be approved, as approval would result in automatic revocation of the petition under 8 C.F.R. § 214.2(h)(11)(ii). Thus, 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.