

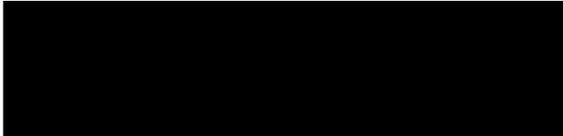
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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
BCIS, AAO, 20 Mass, 3/F  
Washington, DC 20536



**SEP 26 2003**

File: WAC 01 228 52623 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:   
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

**INSTRUCTIONS:**

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a Los Angeles software consulting firm with two employees and a gross annual income of \$250,000. The petitioner seeks to temporarily employ the beneficiary for three years as a programmer-analyst. The director denied the request to extend the beneficiary's status, finding that the petitioner was an agent or contractor, and that the petitioner failed to provide contracts between itself and its clients and the itinerary of the beneficiary's intended workplaces.

On appeal, counsel submits a statement, along with a W2 Wage and Tax Statement from 2001 and contracts between the petitioner and its client. Counsel asserts that the petitioner is the employer and not a contractor or agent. The W2 form, which was unavailable at the time of the original filing, shows that the petitioner paid the beneficiary regular wages for the several months at the end of the year during which he worked for the petitioner. Counsel also reiterates that the petitioner retains control over the beneficiary, whether the work takes place in-house or at the client's site.

Counsel also submits contracts showing that Tekobjects has a business relationship with the State Compensation Insurance Fund. By this document, it is counsel's intention to demonstrate that the beneficiary's actual employment is not speculative; in other words, there exist real projects which provide the basis for his employment.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

It appears that the beneficiary is not sent out to remote sites where his work would be controlled by a different employer. Although his job duties include meeting with client management in order to come up with software plans, his supervision and direction come from Tekobjects. The Bureau does not dispute that the position qualifies as a specialty occupation or that the beneficiary is qualified to perform the duties proposed. By

clarifying the petitioner's role and by submitting the above-mentioned documents on appeal, the petitioner has overcome the director's legitimate concerns regarding the nature of the proffered position.

**ORDER:** The appeal is sustained.