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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: MAY 12 2009
SRC 07 800 12261

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

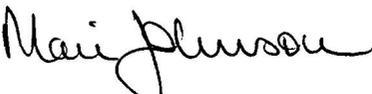
PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:
[REDACTED]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision; however, because the petition is not approvable, it is remanded for further action and consideration.

The petitioner is a software development and consulting firm. It seeks to employ the beneficiary permanently in the United States as a software engineer pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent whose services are sought by an employer in the United States. The instant petition is for a substituted beneficiary. An I-140 petition for a substituted beneficiary retains the same priority date as the original Form ETA 750 labor certification from the Department of Labor (DOL).¹

The director determined that the petitioner had not submitted the original Form ETA 750 and denied the petition accordingly.

On appeal, counsel submits a brief asserting that the original Form ETA 750 was submitted in support of another petition filed in the beneficiary's behalf, which was consolidated into a record of proceeding under a different alien registration number, A89 247 807. We have now obtained that record of proceeding and confirmed that the original ETA 750 for the original beneficiary is part of that file. Thus, we withdraw the director's decision.

The petition, however, is not approvable. The petition was filed by the petitioner on May 2, 2007, listing a Maine address as the petitioner's address and the proposed worksite. The website of the Maine Secretary of State, <http://icrs.informe.org/nei-sos-icrs/ICRS?MainPage=x> (accessed April 30, 2009 and incorporated into the record of proceeding), however, reveals that the petitioner's status in Maine was administratively dissolved on October 25, 2005, approximately 18 months before the petition was filed. In fact, USCIS electronic records reveal that the petitioner has continued to file other Form I-140 petitions from its Maine address.

The record also contains inconsistencies regarding the beneficiary's work history. On the ETA 750B, signed by the beneficiary, the petitioner in Maine is listed as the beneficiary's employer as of February 2005. The petitioner submitted approval notices for nonimmigrant visa petitions filed in behalf of the beneficiary by a company with the petitioner's name but a Florida address. The petitioner also submitted Internal Revenue Service (IRS) Form W-2 Wage and Tax Statements issued by a company in Florida with the petitioner's name to the beneficiary for 2005 and 2006. The 2005 Form W-2 lists a Georgia address for the beneficiary and the 2006 Form W-2 lists a New Jersey address for the beneficiary. Both Forms W-2 list a Federal Employer Identification Number (FEIN) for the employer of [REDACTED]. According to the website of the Florida Department of State, <http://sunbiz.org/corinam.html> (accessed April 30, 2009 and incorporated into the record of

¹ Louis D. Crocetti, Associate Commissioner, Immigration and Naturalization Service, to Regional Directors, *et al.*, Immigration and Naturalization Service, *Substitution of Labor Certification Beneficiaries*, at 3 (March 7, 1996).

proceeding), the FEIN for the company with the petitioner's name and the address listed on the Forms W-2 is [REDACTED]. Thus, it appears that the Florida company with the same name is a different entity with a different FEIN than the one listed on the Forms W-2. We have also been unable to confirm via official state websites that the petitioner or a company with the petitioner's name is authorized to operate in Georgia, <http://corp.sos.state.ga.us/corp/soskb/csearch.asp> (accessed April 30, 2009 and incorporated into the record of proceeding), or New Jersey, <https://accessnet.state.nj.us/home.asp> (accessed April 30, 2009 and incorporated into the record of proceeding). The above discrepancies cast serious doubt on the credibility of the Forms W-2.²

Therefore, this matter will be remanded for a resolution of the above discrepancies and consideration of a formal finding of fraud against the petitioner and the beneficiary if those discrepancies are not resolved with objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn; however, the petition is currently unapprovable for the reasons discussed above, and therefore the AAO may not approve the petition at this time. Because the petition is not approvable, the petition is remanded to the director for issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.

² While we have confirmed that the petitioner or a company with the same name is active in the state listed on the petitioner's alleged IRS Form 1065 U.S. Return of Partnership Income, Tennessee (<http://www.tennesseeanytime.org/sosname/>, accessed on April 30, 2009 and incorporated into the record of proceeding), the petitioner does not indicate that the beneficiary has worked or will work in Tennessee.