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U.S. Citizenship  
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FILE: WAC 01 216 56071 Office: CALIFORNIA SERVICE CENTER Date: JUN 12 2006

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:  
[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.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner is a consulting firm that seeks to employ the beneficiary as an architect. The petitioner 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 because the petitioner did not establish that an employer-employee relationship existed.

On appeal, counsel submits a brief stating that Citizenship and Immigration Services (CIS) has ignored settled precedent and disregarded legal authority regarding corporate law. Counsel asserts that the fact that a petitioner may be owned in whole or in part by the beneficiary does not negate that an employer-employee relationship exists. Counsel further asserts that a previous AAO decision and case law support the petitioner's claim that its sole shareholder may be the same individual as the beneficiary.

The regulations define a U.S. employer at 8 C.F.R. § 214.2(h)(4)(ii) as 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.

The petitioner is a corporation incorporated under the laws of the State of Arizona and has engaged the beneficiary to work in his individual capacity as an architect. The beneficiary is the president of the corporation.

The director found that the petitioner did not establish that an employer-employee relationship existed, as defined by the regulations. In particular, the director stated that the petitioner did not establish that there was any individual who could have 'control' over the beneficiary and fire him if he should fail to perform his duties.

In response to the director's notice of intent to deny (NOID) the petition, counsel submitted the definition of a corporate entity from *Black's Law Dictionary*, as well as citing previous cases. In a separate response to the NOID filed three months after the initial response, counsel stated that a previous AAO decision supported the premise that a petitioner's sole owner can be the same person as the sole beneficiary. *Matter of X*, File No. SRC 98 101 50785, August 1999. Counsel notes that in that case, the AAO cited *Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm. 1980), to support its conclusion that the petitioner corporation was a separate legal entity from the beneficiary. The AAO finds in this case that the petitioner is a separate legal entity from the beneficiary, and the beneficiary would not be self-employed.

Established tenets of corporate law, as well as cases such as *Matter of Aphrodite*, state that a corporation has a separate legal identity from its owner. As such, a corporation, even if it is owned and operated by a single

person, may hire that same individual and the parties will be in an employer-employee relationship, as is the case in the instant matter.

The petition still may not be approved, however. The director did not address the issue of whether the proffered position is a specialty occupation and whether the beneficiary is qualified to perform the duties of a specialty occupation. The AAO notes that the petitioner submitted an evaluation from Josef Silny & Associates, Inc., a company that specializes in evaluating academic credentials. The evaluation is based upon the beneficiary's education, training and work experience. A credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). In addition, there is no evidence in the record that the beneficiary has a certificate or registration, as required by the Arizona Revised Statutes, Title 32, Chapter 1. As the director did not address these issues, the petition will be remanded in order for the director to determine whether the position is a specialty occupation and whether the beneficiary is qualified to perform the services of a specialty occupation.

The director may afford the petitioner reasonable time to provide evidence pertinent to the issues of whether the proffered position is a specialty occupation, and whether the beneficiary is qualified to perform the duties of a specialty occupation, and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's August 16, 2002 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.