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



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**NOV 03 2009**

FILE: WAC 08 039 50523 Office: CALIFORNIA SERVICE CENTER Date:

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:

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).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the service center director, 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 wholesale distributor of cash drawers and printers and seeks to employ the beneficiary as a research associate. 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, finding that the petitioner had failed to submit sufficient evidence demonstrating that a credible offer of employment existed for the beneficiary. Specifically, the director found that the evidence submitted did not establish that a bona fide position existed for the beneficiary.

On appeal, the petitioner asserts that the director's basis for denial was erroneous, and contends that the petitioner satisfied all evidentiary requirements. Counsel submits a brief and additional evidence in support of these contentions.

In a letter of support dated November 14, 2007, the petitioner provided the following overview of its company background:

[Petitioner] started business as a value-added wholesale distributor of point-of-sale hardware, and was established in 1988. The company became aware of the market for herbal products imported from India and after about two years of research launched the [REDACTED] division of the company which directly imports and distributes herbal supplements developed under the professional supervision of [REDACTED] physicians. The products are created under the tenets of [REDACTED] medicine, a healthy lifestyle designed to naturally prevent disease and increase overall bodily well-being. In addition to offering products centered around the [REDACTED] philosophy, the company has developed a line of seminars created with the purpose of providing education and training to doctors and health professionals.

The petitioner further stated that it is a rapidly growing company, and that it has warehouses in Pasadena, California, Gainesville, Florida, and Toronto, Canada, as well as sales offices in Dallas and Austin, Texas. Regarding the beneficiary, the petitioner claimed that it requires her services as a research assistant in the field of Ayurvedic medicine to work in the [REDACTED] division of the company. The petitioner's Form ETA 9035E, Labor Condition Application (LCA), identifies the beneficiary's work location as Pasadena, California.

The director found that the petitioner had failed to submit sufficient evidence pertaining to the proposed employment of the beneficiary, and issued a request for evidence on November 29, 2007. Specifically, the director requested evidence to substantiate the petitioner's annual income, current number of employees, and type of business.

The director found the petitioner's response to the request for evidence insufficient, and denied the petition on January 16, 2008.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii), *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.

To qualify as a United States employer, all three criteria must be met. The Form I-129 and the petitioner's federal tax returns contained in the record indicate that the petitioner has an Internal Revenue Service Tax Identification Number. However, the director found that the evidence contained in the record was insufficient to establish that the petitioner engaged or would engage the beneficiary to work in the United States and had or would have an employer-employee relationship with the beneficiary.

Upon review, the AAO concurs with the director's findings. The petitioner has failed to establish that it has satisfied the criteria at 8 C.F.R. § 214.2(h)(4)(ii)(1) and (2).

The petitioner maintains that the beneficiary will work as a research associate for [REDACTED] a new division of the petitioner. The job offer clearly indicates that the beneficiary's services are required to conduct research on recent developments and findings in [REDACTED] medicine. However, the evidence submitted in the record does not demonstrate that [REDACTED] is actually a division of the petitioner.

The record contains the petitioner's Form 1120-S, U.S. Income Tax Return for an S Corporation, for 2006, which identifies the petitioner by name. On Line B, which asks for the petitioner's business activity code number, the petitioner lists [REDACTED]. According to the Internal Revenue Service's Principal Business Activity Code list, this number corresponds to "Machinery, Equipment & Supplies," which is found under the heading of "Wholesale Trade" and subheading "Merchant Wholesalers, Durable Goods." In addition, the petitioner's Form 1120, U.S. Corporation Income Tax Return, for 2005 is also submitted. This document likewise indicates on Schedule K, Line 2, a business activity code of [REDACTED] which corresponds to "Computer and Software Stores." Additionally, lines 2(b) and 2(c) indicate that the petitioner's business activity is "Sales," and its product or service is "Computer and Accessories."

Based on these documents, there is no evidence demonstrating that the petitioner is engaged in the sale of [REDACTED] products, or the provision of [REDACTED] as claimed. The petitioner submits a copy of its website, which makes no reference and provides no link to [REDACTED] its claimed division. In fact, the petitioner provides a copy of the [REDACTED] website, which makes no reference to its association with the

petitioner. While the AAO notes that the [REDACTED] website does list the same address as that of the petitioner, this fact alone is insufficient to establish that [REDACTED] and the petitioner are the same entity.<sup>1</sup>

The record prior to adjudication contained no documentary evidence establishing that the petitioner, a business engaged in the wholesale and manufacture of cash drawers, provided the beneficiary with a credible offer of employment to work as a research associate in the field of [REDACTED] medicine. While it claimed to have a separate division wholly devoted to this field, the petitioner provided no evidence to support this contention. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Moreover, the petitioner provided no employment agreement, job offer letter, or other contractual evidence to support a finding that the beneficiary would be employed by the petitioner as a research associate.

The petitioner, therefore, provided no evidence that a valid employment agreement or credible offer of employment existed between the petitioner and the beneficiary. Therefore, the petitioner has failed to satisfy the requirements at 8 C.F.R. §§ 214.2(h)(4)(ii)(1) and (2). For this reason, the petition may not be approved.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed. The petition is denied.

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<sup>1</sup> It is also noted that, according to California State corporate records, [REDACTED] was registered as a Limited Liability Company on December 27, 2007. Additionally, California State corporate records indicate that the petitioner in this matter was registered as a Limited Liability Company on December 2, 2005. As of the date of this decision, both companies remain active. While the AAO notes that [REDACTED] was not registered as of the filing date of this petition, the fact remains that no evidence was submitted to establish that, at the time of filing, [REDACTED] was a division of the petitioner who filed this petition. Regardless, one month after the filing of this petition, [REDACTED] became a separate legal entity from the named petitioner in this matter. Therefore, it appears the actual employer of the beneficiary in this matter would be [REDACTED] and not the petitioner.