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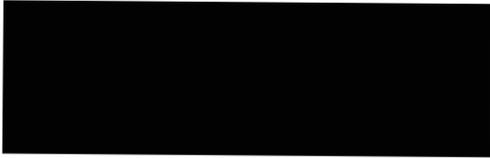
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
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FILE: EAC 08 013 51538 Office: VERMONT SERVICE CENTER Date: **MAY 01 2010**

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: SELF-REPRESENTED

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, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center acting director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner represents itself to be an information technology firm.¹ To employ the beneficiary in a position designated as a software engineer, the petitioner endeavors to classify her 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). Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The petitioner in this matter, as was stated on the Form I-129, is [REDACTED]. On at least two occasions, an attorney representing [REDACTED], a company at the same address that utilizes the same staff, attempted to substitute [REDACTED] as the petitioner in this matter. That attorney asserted that [REDACTED] had been listed as the petitioner because of a typographical error by a typist who works for both companies. Counsel provided statements from principals of both [REDACTED] and [REDACTED] in support of his assertions.

Changing employers or otherwise attempting to change the entity that will employ the beneficiary is a material change in the terms and conditions of employment. In order to make a material amendment to an H-1B petition, however, a petitioner must file an amended or new petition. The petitioner did not file such an amended or new petition, and the attempted substitution of [REDACTED] for [REDACTED] was ineffective. [REDACTED] was and remains the petitioner in this matter.

The AAO notes that the acting director incorrectly addressed the decision of denial to [REDACTED]. That error was harmless, as (1) [REDACTED] and [REDACTED] share office space and personnel and the petitioner likely acquired notice of the decision of denial received at its address, (2) [REDACTED] claims not to have filed the petition and evinces no interest in prosecuting it, and (3) as is illustrated further below, the petition would, in any event, have been denied on various grounds.

The acting director denied the petition, finding that the petitioner (1) failed to demonstrate that it is a United States employer within the meaning of 8 C.F.R. § 214.2(h)(2)(i)(A), (2) failed to establish that the petitioner will employ the beneficiary in a specialty occupation position, (3) failed to demonstrate that the beneficiary is qualified for a specialty occupation position, (4) failed to demonstrate that the certified Labor Condition Application (LCA) is valid for the location in which the petitioner would employ the beneficiary, and (5) failed to demonstrate that the offer of employment to the beneficiary is *bona fide*.

¹ It should be noted that a search of the records of the Commonwealth of Virginia's State Corporation Commission shows no evidence that the petitioner was ever formed or registered to do business in Virginia. Although the reason for the petitioner's absence from this database is unclear, it raises the issue of the company's existence as a legal entity in the United States.

The appeal in this matter was filed by [REDACTED]. Although the appeal was timely filed and accompanied by the required fee, a Form G-28 Notice of Entry of Appearance shows that [REDACTED] represents [REDACTED]. The record contains no indication that [REDACTED], the petitioner in this matter, has agreed to be represented by counsel.

As [REDACTED] is not a party to this proceeding, it is not permitted to file an appeal. As [REDACTED] apparently only represents [REDACTED] he was not authorized to file the petition in this matter for the petitioner. The appeal must therefore be rejected as improperly filed. 8 C.F.R. § 103.3(a)(1)(iii)(B); 8 C.F.R. § 103.3(a)(2)(v)(A)(1); 8 C.F.R. § 103.3(a)(2)(v)(A)(2)(i).²

The AAO notes, further, that if the appeal in this matter were not rejected, [REDACTED] could not prevail. The service center issued a request for evidence (RFE) in this matter on May 15, 2008. That RFE asked the petitioner to provide (1) a detailed description of the proffered position, (2) the contract between the petitioner and beneficiary listing all the terms and conditions of employment, (3) the lease/rental agreement for the petitioner's office space (4) a list of the petitioner's employees including their work locations and educational background, (5) an organizational chart, (6) copies of the petitioner's Form 941 quarterly returns for the previous two quarters, (7) the petitioner's audited or reviewed financial statements, and (8) photographs of the facility where the beneficiary would work. The petitioner was accorded until August 10, 2008 to respond to that RFE, but it did not provide the requested evidence pertinent to [REDACTED]. The failure to provide the evidence requested is, in itself, a basis for denying the petition. 8 C.F.R. § 103.2(b)(14). The petition was also correctly denied on all five bases relied upon by the acting director.

Additionally, the LCA submitted does not support the instant petition, as that LCA names [REDACTED] as the employer, and it may not be used to support a visa petition submitted by [REDACTED].

Further still, if the petitioner in this matter were [REDACTED] all five of the independent bases upon which the acting director relied in dismissing the appeal would preclude approval of the petition. The RFE was issued, as noted above, on May 15, 2008. The submission by [REDACTED] counsel was not responsive. The petition was denied on August 19, 2008. On September 19, 2008, [REDACTED] provided, with the appeal in this matter, various documents that would have been responsive to some of the requests contained in the RFE if it had, in fact, been submitted in response to the RFE, and if the petitioner had, in fact, been [REDACTED].

When a petitioner has been previously put on notice of deficiencies in the evidence and afforded an opportunity to cure those deficiencies, this office will not accept evidence relevant to those deficiencies that is offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). Under the circumstances, this office need not and would not consider the untimely evidence offered on appeal.

² Further, as [REDACTED] does not represent [REDACTED] in this matter, he is not entitled to receive a copy of the decision in this matter.

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As the appeal was not properly filed, it will be rejected. 8 C.F.R. § 103.3(a)(2)(v)(A)(1).

ORDER: The appeal is rejected.