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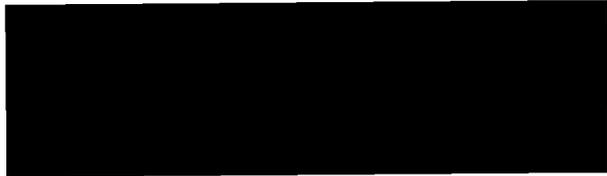
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

MAY 03 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:



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 director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

To employ the beneficiary in what the petitioner designates a computer specialist/programmer analyst position, the petitioner filed this nonimmigrant petition to classify the beneficiary as an H-1B 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 petitioner described itself as a "Software services & Products for Software development and testing/QA" company.

The director found that the petitioner had not established that a *bona fide* job offer exists in this case. That finding was based on inconsistencies in the evidence pertinent to the location where the work would allegedly be performed. On appeal counsel contended that the director's denial of the petition is erroneous and should be reversed.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), defines an H-1B nonimmigrant as an alien:

(i) who is coming temporarily to the United States to perform services . . . in a specialty occupation described in section 1184(i)(1) . . . , who meets the requirements of the occupation specified in section 1184(i)(2) . . . , and with respect to whom the Secretary of Labor determines . . . that the intending employer has filed with the Secretary an application under 1182(n)(1).

On the Labor Condition Application and the I-129 petition, the petitioner stated that its address is [REDACTED] and that the employment would be performed at that same address. In a request for evidence dated June 4, 2008, the California Service Center noted that the address provided is a single family residence. Evidence in the record shows it to be the residence of the petitioner's president. The service center requested that the petitioner identify the location where the work would be performed and provide a copy of its lease of those premises specifying its square footage. The service center also requested copies of all of the petitioner's business licenses.

In response, the petitioner provided an agreement it executed with American Exec Cupertino, Inc. (AEC), entitled "Business Identity Agreement." In that agreement AEC, of [REDACTED] agreed to provide secretarial services and similar services to the petitioner for a monthly fee, such that it could appear to operate a business at AEC's business address. A floor plan of that address shows that it is broken up into many very small offices. The business identity agreement does not indicate that the petitioner leased any of those offices. The business identity agreement specifies that it was to take effect on April 1, 2008.

The petitioner also provided a lease it executed with American Exec Sunnyvale LLC, (AES). That lease is dated June 20, 2008, shortly after the RFE was issued, and indicates that the petitioner contracted to rent offices at [REDACTED] beginning on

June 23, 2008 for \$575 per month. The lease also indicated that AES provides services similar to those provided by AEC. The square footage of any premises so leased is not included in that lease.

Instead of providing actual business licenses as requested by the director, the petitioner only provided an application for a business license showing its location as [REDACTED]

In the decision of denial the director noted that AES sells “virtual offices” at the Oakmead Parkway address, where the petitioner now claims the work would be performed. The AAO takes administrative notice that a virtual office is an arrangement through which a company can represent that it is located at a given address when, in fact, its employees, if any, work elsewhere.

The decision of denial also notes that other companies use the same Oakmead Parkway address the petitioner claims as its own, including the suite number. The record contains printouts of web content, accessed September 9, 2008, showing that [REDACTED] and Goongoora Inc. all claim to occupy [REDACTED] as does the petitioner.

In a letter submitted on appeal, the petitioner’s president acknowledged the petitioner was previously operating from his home in Cupertino, California,” but added that the petitioner has moved into actual office space. The petitioner’s president noted that although AEC provides virtual office services it also rents office space.

Notwithstanding that AEC may rent office space, the letter from the petitioner’s president does not explain why at least five other companies claim to do business in the same suite the petitioner now claims as its own business address. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The evidence does not demonstrate that the petitioner has any physical location or that it is even licensed to do business in California and does not, therefore, demonstrate that a *bona fide* job offer exists in this case. For this reason the petition may not be approved.¹

¹ It is noted that, even if the petitioner had submitted evidence that it had acquired an actual physical location and license to conduct business in the State of California since the date the petition was filed, such evidence would be insufficient to establish eligibility in this matter. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

Beyond the decision of the director, it is noted that the petitioner designated the proffered position as a computer specialist/programmer analyst position. The petitioner provided a description of the proposed duties of the proffered position. The record does not demonstrate, however, that the performance of those duties as described would require a bachelor's or higher degree in a specific specialty. As such, the record does not demonstrate that the proffered position qualifies as a specialty occupation as described in the pertinent statutes and regulations, including section 101(a)(15)(H)(i)(b) of the Act, section 214(i)(1) of the Act, and 8 C.F.R. § 214.2(h)(4)(iii)(A). The petition will therefore be denied on this additional basis.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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. The appeal will be dismissed and the petition denied.

ORDER: The appeal is dismissed, and the petition is denied.