



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF H-D-C-

DATE: MAY 16, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a vehicle tracking system business, seeks to extend the Beneficiary's temporary employment as an "information systems manager" under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director, Vermont Service Center, denied the petition. In the decision, the Director noted, *inter alia*, that the evidence indicated that the Petitioner was paying the Beneficiary approximately \$30,000 per year less than the wage stated on the Form I-129, Petition for a Nonimmigrant Worker.<sup>1</sup>

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred in denying the petition.

Upon *de novo* review, we will dismiss the appeal.

#### I. DISCUSSION

The regulations state that an inaccurate statement anywhere on the Form I-129 or in the evidence submitted in connection with the petition mandates its denial. *See* 8 C.F.R. § 214.2(h)(10)(ii); *see also id.* § 103.2(b)(1).

The Petitioner stated on the Form I-129 and the labor condition application that the Beneficiary's rate of pay would be \$90,709 per year. In addition, the Petitioner provided the following information on the Form I-129 (page 5):

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<sup>1</sup> The Director noted that there were other inconsistencies in the record and that the Petitioner had not demonstrated that the proffered position qualified as a specialty occupation.

9. Other Compensation (*Explain*)

HOUSING ALLOWANCE

In response to the Director's request for evidence (RFE), the Petitioner stated that the Beneficiary received:

- A bi-weekly salary of \$2,480 [\$64,480 annualized];
- a monthly allotment of \$2,249 for housing [\$26,988 annualized]; and
- \$500 for transportation [\$6,000 annualized].

On appeal, however, the Petitioner reported that the Beneficiary receives:

- A salary of \$4,990.27 per month [\$59,883.24 annualized];
- a housing allowance of \$2,349 [\$28,188 annualized]; and
- a car allowance of \$550 per month [\$6,600 annualized].

In the appeal brief, the Petitioner further claims that the Beneficiary's annual compensation package amounts to \$116,224.68. According to the Petitioner, the Beneficiary receives three checks monthly, "one containing his salary of \$2,480.00, another one of \$1,999.10 and a third one of \$2,349."

Thereafter, in response to our RFE, the Petitioner stated the following:

Please note that the Beneficiary's annual compensation as stated in [response to the Director's] RFE is:

\$64,480	Salary
\$6,000	Car allowance
\$600	Christmas bonus
\$28,168	Housing

The total amount of compensation is \$99,247.00

The Petitioner has provided inconsistent information regarding the Beneficiary's compensation. Further, the Petitioner previously stated on the Form I-129 that the housing allowance was "other compensation" – separate from his annual salary, but now states that the housing allowance (\$28,168 per year according to the Petitioner's most recent response) is included in the Beneficiary's annual compensation.

Moreover, while the Petitioner submitted copies of checks made payable to the Beneficiary, they do not indicate what those payments are for and there is no indication that they were given to the Beneficiary and cashed. Notably, the housing allowance (\$28,168 per year) does not appear on the 2014 or 2015 IRS Form W-2PR, Withholding Statements, issued to the Beneficiary as wages or reimbursable expenses and fringe benefits.

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The Petitioner represented to U.S. Citizenship and Immigration Services that it would pay the Beneficiary \$90,709 and provide a housing allowance. The evidence, however, does not establish that the Petitioner will comply with the terms and conditions it provided in the H-1B petition. Accordingly, the appeal will be dismissed. As this basis for denial is dispositive of the Petitioner's eligibility for the benefit sought, we need not and will not address at this time any additional issues in the record of proceeding.

## II. CONCLUSION

The burden is on the Petitioner to show eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of H-D-C-*, ID# 14814 (AAO May 16, 2016)