



Certification of Documents
Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form G-24
Internal Use

United States of America

Department of Homeland Security
U.S. Citizenship and Immigration Services



01/12/2023

Date (mm/dd/yyyy)

Certification of Documents

(Originals or Copies thereof)

BY VIRTUE OF the authority vested in me by Title 8, Code of Federal Regulations, Part 103 of the Immigration and Nationality Act (INA), and Title IV, Subtitle E, Section 451 and Section 456 of the Homeland Security Act of 2002,

I HEREBY CERTIFY that the annexed documents are originals, or copies thereof, from the records of U.S. Citizenship and Immigration Service, Department of Homeland Security, which the Secretary is the legal custodian by virtue of Section 103 of the Immigration and Nationality Act. These documents relate to:

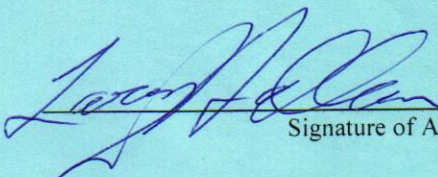
Subject: _____

Also known as (aka): _____

File and/or Certificate Number: IOE8476208185

Number of Pages Copied: 1-157

Annotations



Signature of Authorized Person

Larry Hallam - Section Chief CPAU/COR III

Print Name and Title of Authorized Person

California Service Center

Office of Authorized Person

October 6, 2022

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
California Service Center
24000 Avila Road, 2nd Floor
Laguna Niguel, CA 92677-0590

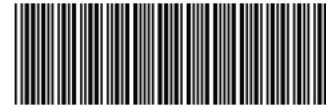


U.S. Citizenship
and Immigration
Services

TREEZ INC
c/o DIANE M BUTLER
DAVIS WRIGHT TREMAINE LLP
PO BOX 1638
FREMONT, CA 94538



IOE8476208185



Form I-129, Petition for a Nonimmigrant Worker

DECISION

On April 26, 2022, your organization, TREEZ INC, filed a Form I-129, Petition for a Nonimmigrant Worker (Form I-129), with U.S. Citizenship and Immigration Services (USCIS), seeking to classify PETHE, AMEYA (beneficiary) as a temporary worker in a specialty occupation (H-1B) under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (INA).

Section 101(a)(15)(H)(i)(b) of the INA relates to a noncitizen:

...who is coming temporarily to the United States to perform services...in a specialty occupation described in section 214(i)(1)..., who meets the requirements for the occupation specified in section 214(i)(2)..., and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under 212(n)(1).

You seek to amend the prior petition and requested that USCIS amend the beneficiary's stay.

You stated on the petition that you are a software developer organization with 80 employees. You seek to employ the beneficiary as a Director of Development Operations from April 22, 2022 to January 2, 2025.

In visa petition proceedings, the petitioner bears the burden of establishing eligibility for the benefits sought. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966).

USCIS reviewed the initial record of evidence for eligibility in accordance with the INA; Title 8, Code of Federal Regulations (8 CFR); and any other applicable statutes and regulations, and could not determine whether you had established eligibility for the benefit sought. Accordingly, on July 13, 2022, USCIS issued to you a Request for Evidence (RFE). On September 22, 2022, USCIS received your response.

In accordance with *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010), USCIS has examined the evidence of record for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, and determined that you have not established eligibility for the requested classification and any requested status by a preponderance of the evidence. A detailed discussion of the grounds for denial and the related evidence follows.

Prior Approvals

USCIS acknowledges that you are requesting to amend your petition. When adjudicating a subsequent petition or application involving the same parties and the same underlying facts, where appropriate, USCIS will generally defer to its prior determination of eligibility for the particular nonimmigrant classification sought.

However, each petition filing is a separate proceeding with a separate record. Despite any previously approved petitions, the petitioner bears the burden to establish eligibility for each petition that it submits, and an immigration benefit cannot be granted when the petitioner fails to meet its burden of proof for the petition it files, including an extension petition. *See* INA § 291. USCIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals which may have been erroneous. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988).

USCIS will not defer to prior approvals where:

1. There was a material error with regard to the previous approval(s);
2. There has been a material change in circumstances or eligibility requirements; or
3. There is new material information that adversely impacts the petitioner's, beneficiary's, or applicant's eligibility.

Upon review of the evidence provided with the initial submission, questions arose regarding the legality of the services to be provided by the beneficiary. Therefore, USCIS will not defer to its prior approval in adjudicating this petition.

Illegal or Invalid Employment

The only issue to be discussed is whether the proposed employment is based on an offer of employment that violates federal law such that the beneficiary's employment is based on an illegal or otherwise invalid employment agreement.

USCIS is primarily responsible for adjudicating immigration benefit requests available under applicable immigration law. To determine eligibility for many immigration benefits, USCIS must also take into account other, intersecting areas of law, such as licensure, family, employment, and (as relevant here) criminal. USCIS cannot approve a petition based on employment that violates a federal or state law. It appears that your proposed employment violates federal law under the Controlled Substances Act (CSA) found in Title 21 of the United States Code (U.S.C.), section 801 *et seq.* Specifically, the CSA imposes restrictions on the manufacture and distribution of marijuana in the United States. 21 U.S.C. sections 812, 841(a)(1).

Although certain states have legalized and decriminalized marijuana, marijuana is a Schedule I controlled substance under 21 U.S.C. section 812(c). The CSA states, "...it shall be unlawful for any person knowingly or intentionally ... to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance." 21 U.S.C. section 841(a)(1). It is also illegal under federal law to conspire or aid and abet the cultivation, distribution, and possession of marijuana as defined in the CSA. 21 U.S.C. section 846; Title 18, United States Code (18 U.S.C.) section 2; 18 U.S.C. section 371. Specifically, 18 U.S.C. section 2(a) states that "[w]hoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its

commission, is punishable as a principal.”

As indicated above, USCIS informed you in a notice that it appears that the beneficiary’s proposed employment is in violation of the CSA or aids and abets activities that violate the CSA. You were requested to submit evidence showing that you met this eligibility requirement.

You responded with the following evidence related to whether the beneficiary’s proposed employment is in violation of the CSA or aids and abets activities that violate the CSA:

- A letter of support from David Yan, Chief Financial Officer at Treez Incorporated; and
- A letter of support from Diane Butler, Attorney with Davis Wright Tremaine LLP.

You have not established that the beneficiary’s proposed employment is not in violation of the CSA or does not aid and abet activities that violate the CSA.

Generally, you state that the beneficiary will continue to architect, build, and manage production systems. Specifically, you describe the beneficiary's job duties as:

- Manage teams of Cloud Operations Engineers, Site Reliability Engineers (SREs), AWS Engineers to operate Treez production systems safely at high speed and wide scale; provide team members with availability, performance, and scalability expertise.
- Create, manage, and maintain cloud infrastructure on AWS services using API Gateway, Lambda, Cloud Formation, RDS, DynamoDB, RedShift, S3, ESK, MSK, and EC2, implementing Treez product features.
- Responsible for monitoring for applications and infrastructure using toolsets such as Zabbix, Nagios, ELK, Splunk, Prometheus, etc.
- Implement automate infrastructure using code Terraform, Ansible, CloudFormation, etc.
- Develop service health dashboards by consuming exposed APIs from Treez application and AWS services.
- Responsible for site reliability; improve the speed, performance, availability and security for Treez platform and products.
- Improve customer experience through quantitative service monitoring, alarming, and dashboards.
- Define, educate on, and adapt suitable development operations release management procedures.
- Provide production support to all Treez operational services.
- Plan, deploy, and maintain critical business applications in production and non-production cloud environments.
- Work closely with the business to build cutting-edge solutions following the lean/agile development process.
- Perform data analysis to gauge service trends and improve KPIs.
- Perform root cause analysis for incidents and outages. Design procedures for system troubleshooting and maintenance.
- Collaborate with peer engineering teams throughout the full Software Development Lifecycle (SDL).

- Works with peers and business partners to document business processes and information technology requirements, analyze requirements, develop standard operating procedure, and prepare functional and technical specifications.

Following a review of the evidence of record, it appears that the services to be provided by the beneficiary will aid or abet activities related to the manufacture, cultivation, distribution, or possession of marijuana.

In a letter of support, your Chief Financial Officer (CFO) states the beneficiary's duties will achieve your organization's aims of furnishing marijuana dispensaries with software solutions and business applications, thereby furthering your business nationwide. The CFO describes your organization as a "Software as a Service" ("SaaS") company. Solutions your organization currently provides to customers include Sell Treez (point-of-sale software for compliance with reporting, tax, and transaction detail regulations), and TreezPay (a cash-only platform for debit, ACH, analytics, and inventory management). Your CFO also states that these SaaS solutions are currently used by dispensaries located in Arizona, California, Colorado, Michigan, Missouri, Nevada, New Mexico, New Jersey, Oklahoma, and Washington for a monthly subscription. Your CFO further states that compliance with state regulations is accomplished by way of an application programming interface (API) that each state manages. In addition, your CFO explains that the beneficiary's role is in software engineering, and not the production or distribution of controlled substances. Lastly, your CFO states no aspect of the beneficiary's role includes the cultivation, processing, possession, distribution, or delivery of cannabis or trafficking of controlled substances.

In a letter of support, your attorney states that USCIS approved the change of employer petition previously filed by your organization, and notes the occupation and duties remain the same. Counsel states the instant petition is solely for a change of location for the beneficiary. Counsel asserts that the business activities of your organization are not in violation of the CSA, nor does your organization aid or abet a violation of the CSA, as the dispensaries you serve operate lawfully at the state level. Counsel further states that your organization cannot possess, sell, or distribute cannabis, or serve as an agent, as your enterprise functions "wholly outside of the distribution chain." Counsel also states, in view of the definition of an "agent," that your organization is not an agent as characterized by the CSA. Additionally, your attorney argues that your organization cannot be considered to be aiding and abetting a federal controlled substances violation, due to the absence of any intent to violate the CSA. Counsel explains that the profits from the sale of legal software solutions to marijuana dispensaries do not derive from the dispensaries' business but from the lawful provision of services to those businesses, comparing the arrangement to the owner of an ATM that is placed within a cannabis dispensary; while the ATM owner profits from the fees attached to dispensing cash in that location, that person has no specific intent for the cash to be used to buy marijuana.

To establish eligibility for an employment-based immigration benefit, you are required to offer employment that is legal and valid under federal law at the time of filing.

Marijuana has been designated as a Schedule 1 drug under the CSA. Schedule 1 is the category for drugs or substances which have a high potential for abuse, and which have no formally accepted use relating to medical treatments in the United States. Schedule 1 is also the category for drugs or substances which are not prescribed and are not available under medical supervision. You have stated that your organization only serves licensed dispensaries in states where marijuana dispensaries are permitted, and that this serves as evidence of compliance with the CSA. However, the fact that some states permit the operation of marijuana dispensaries does not negate the inclusion of marijuana in the CSA as a Schedule 1 drug. To date, marijuana remains on Schedule 1. Therefore, the statements by your CFO and by your Counsel are insufficient to show the position offered to the beneficiary is allowable under federal law.

Activities related to controlled substances are regulated at the federal level through the Drug Enforcement Agency, the Bureau of Alcohol, Tobacco, and Firearms, and other agencies. Notwithstanding the federal prohibition on marijuana under the Controlled Substances Act, many individual states have legalized the sale of marijuana for medicinal and/or recreational purposes. Likewise, each state has its own laws and regulations pertaining to the cultivation, possession, and distribution of marijuana. As a practical matter, marijuana dispensaries are situated at the end of a supply chain where they provide cannabis products to the public. Your organization was established in 2016 for the purpose of furnishing marijuana dispensaries with software solutions and business applications. In addressing your role within this supply chain, you state that your organization does not:

"...cultivate, process, possess, distribute, or deliver cannabis."

Also, you state that your organization:

"...never has been alleged to have manufactured, distributed, or dispensed, or possessed with the intent to manufacture, distribute, or dispense any controlled substance, or to have aided or abetted others to do so."

You state that your organization is not in the business of providing controlled substances but is rather a software company that has marijuana dispensaries as customers; while this is technically true, the services you provide to marijuana dispensaries enable them to conduct financial transactions and are therefore essential to their business model of selling cannabis products to the public. Further, your organization's website fully embraces this relationship and your role within the cannabis industry:

"We're at the beginning of a multi-decade secular trend, empowering the cannabis industry with technology. We're looking for passionate people to join us in applying technology to accelerate the legitimacy, safety, and growth of the cannabis industry to benefit everyone."

Although marijuana is now legal in a number of states, it remains a prohibited Schedule 1 drug under the federal Controlled Substances Act. The evidence of record shows that working for your organization involves providing marijuana dispensaries with business solutions. While not actively participating in manufacture, possession, or distribution of marijuana, the beneficiary would provide dispensaries with software solutions and business applications at your direction. Among these solutions and applications are point of sale, dispensary inventory management, and omnichannel sales delivery solutions. These services are intended to sustain and overhaul business solutions for marijuana dispensaries. Through the provision of these services to dispensaries, the beneficiary would, in fact, be aiding and abetting a violation of the CSA.

As previously stated, USCIS recognizes that individual states have decriminalized and legalized cannabis for medicinal and/or recreational use. However, jurisdiction over immigration continues to be administered at the federal level, and USCIS must follow federal law in adjudicating requests for immigration benefits.

In visa petition proceedings, the petitioner bears the burden of establishing eligibility for the benefits sought. *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). To establish eligibility for an employment-based immigration benefit, you have the burden of proving, *inter alia*, that you are offering employment that is not in violation of federal law. Here, that burden has not been met.

In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. 8 CFR 103.2(b)(16)(ii). USCIS is not required to approve petitions where eligibility has not been demonstrated. *Matter of M-*, 4 I&N Dec. 532 (BIA, A.G. 1952).

Further, USCIS is not required to approve petitions where eligibility has not been shown, merely because of prior approvals which may have been erroneous. *Matter of Church of Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1998).

Status Denial

The portion of the petition requesting an amendment of stay for the beneficiary is also denied because the nonimmigrant visa petition filed on the beneficiary's behalf is denied.

Conclusion

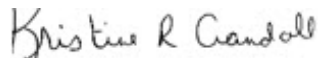
Therefore, your petition is denied.

If you disagree with this decision, or if you have additional evidence that shows this decision is incorrect, you may file a motion or appeal of this decision by filing a Form I-290B, Notice of Appeal or Motion. You may also include a brief or other written statement in support of your motion or appeal. The motion or appeal must be filed within 30 days (33 days if this decision was mailed) from the date of this notice. If a motion or appeal is not filed within the required period, this decision is final.

To obtain the Form I-290B, visit www.uscis.gov/forms. For the latest information on filing location, fee, and other requirements, refer to the Form I-290B instructions; review 8 CFR 103.3 or 103.5; call our USCIS Contact Center at 1-800-375-5283; or visit your local USCIS office.

The Small Business Regulatory Enforcement and Fairness Act established the Office of the National Ombudsman (ONO) at the Small Business Administration. The ONO assists small businesses with issues related to federal regulations. If you are a small business with a comment or complaint about regulatory enforcement, you may contact the ONO at www.sba.gov/ombudsman or phone 202-205-2417 or fax 202-481-5719.

Sincerely,



Kristine R. Crandall
Acting Director, California Service Center