



U.S. Department of Justice
Immigration and Naturalization Service

HQ 70/6.2.8

Office of Adjudications

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Washington, DC 20536

DEC 20 1990

Ms. Kari Ann Woodward, Esq.
2650 S.W. 27th Avenue, Suite 304
Miami, Florida 33133

Dear Ms. Woodward:

This refers to your letter of November 29 in which you pose two questions relating to "employee leasing companies" in the context of the H-1B nonimmigrant classification.

In the scenario described in your letter, a company (the Petitioner) that employs an H-1B nonimmigrant alien has hired a professional employer organization (PEO) to handle its administrative matters such as payroll, health insurance, etc. The petitioner pays the PEO a service fee, which, in turn, issues payroll checks and other benefits to the H-1B employee. As a result, the H-1B alien is paid by the PEO but is actually employed by the petitioner. Based on the above scenario you question whether it is sufficient for the petitioner to file an H-1B petition on behalf of the alien when the alien's remuneration comes from the PEO. You also question whether a PEO could file a petition for an H-1B nonimmigrant in this scenario.

In general, a United States employer must file a petition for an H-1B nonimmigrant. For the purposes of the H-1B classification a United States employer is defined at 8 CFR 214.2(h)(4)(ii) as a person, firm, corporation, contractor, 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.

Based on the regulatory definition of a "United States Employer" it is clear that an entity can file an H-1B petition on behalf of an alien even though the alien's salary is paid from another source, provided that an employer-employee relationship exists. The existence of the employer-employee relationship can be demonstrated by evidence establishing that the entity has control over the H-1B nonimmigrant even though the alien's salary is paid from another source.

Turning to your second question, there is nothing in the Service's regulations that precludes a PEO from filing an H-1B petition for an alien as long as the PEO meets the definition of a United States employer. However, in the scenario you have provided in your letter, it does not appear that the PEO exerts any control over the H-1B nonimmigrant. The ability to control the alien seems to rest with the petitioning entity even though the PEO is paying the alien's salary. The PEO's role in the scenario appears to be more of a record keeper or accountant rather than an employer.

I trust this response satisfactorily addresses your concerns.

Sincerely,



Efrén Hernández III
Director, Business and Trade Services