

Case Study: Badmus Law Firm Helps Self-Employed Dentist Obtain H-1B Visa

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<http://www.physicianimmigration.com/blog/>

In our previous article, we discussed the updated 2010 [memorandum \(PDF\)](#) issued by U.S. Citizenship and [Immigration Services](#) (USCIS), which clarified what constitutes a valid employer-employee relationship for an owner-beneficiary sufficient to qualify for the H-1B “specialty occupation” visa.

But what factors does USCIS consider when evaluating the employer-employee relationship?

As stated in the 2010 memorandum, USCIS will evaluate whether the petitioner has the “right to control” the beneficiary’s employment, such as when, where and how the beneficiary performs the job. The memorandum lists a number of factors that USCIS will review when determining whether the petitioner has the right to control the beneficiary, though no one factor is decisive. The USCIS officers review the entire circumstances to determine whether the employer-employee relationship exists. For foreign nationals who want to be employed in their own business in the U.S., the H-1B visa can be option if the “right to control” is properly established.

In a noteworthy case, a client of Badmus Law Firm — a [dentist by](#) profession — was interested in buying and investing in a dental practice. The dentist, who became sole owner of the practice, was not only the *beneficiary* (employee) but also the sole owner of the *petitioner* (employer) in this case qualifying under the H-1B visa category. By using facts of the case and implementing the H-1B Visa for Entrepreneurs rules, Badmus Law Firm was successful in establishing and demonstrating to the authorities that “right to control” existed in this employer-employee relationship. Badmus Law Firm worked closely with the client in ensuring that the bylaws of the enterprise showed a separate Board of Directors, and that the enterprise bestowed upon the Board powers to hire, fire, pay or otherwise control the beneficiary’s employment regardless of any ownership interest of the employee.

As a result of this effort, USCIS rendered a favorable decision and approved the H-1B petition based on evidence about the existence of employer-employee relationship. The decision proves that an H-1B visa through self-employment can be a viable visa choice for qualified professionals.

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About Badmus Law Firm

If you're a foreign medical graduate who wishes to practice medicine anywhere in the United States, the Badmus Law Firm can help you navigate the often complicated immigration process. You are invited to [contact us](#) at (469) 916-7900 or at immigration@badmuslaw.com.