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JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

INNOVA SOLUTIONS, INC.,	)	Case No. 18-cv-09732 DDP (RAOx)
	)	
Plaintiff,	)	<b>ORDER GRANTING PLAINTIFF’S</b>
	)	<b>MOTION FOR SUMMARY</b>
v.	)	<b>JUDGMENT &amp; DENYING</b>
	)	<b>DEFENDANT’S MOTION FOR</b>
KATHY A. BARAN,	)	<b>SUMMARY JUDGMENT</b>
	)	
Defendant.	)	[Dkts. 28, 29]
	)	
	)	
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Presently before the court are the parties’ cross motions for summary judgment. (Dkts. 28, 29.) Having considered the submissions of the parties and heard oral argument, the court grants Plaintiff’s motion, denies Defendant’s motion, and adopts the following order.

**I. BACKGROUND**

Under the Immigration and Nationality Act (“INA”), an employer may petition for a non-citizen to work in the United States on a temporary basis for a “specialty occupation,” otherwise known as H-1B status. See 8 U.S.C. § 1101(a)(15)(H)(i)(b). On

1 June 5, 2018, Plaintiff Innova Solutions, LLC (“Innova”) filed a Petition for  
2 Nonimmigrant Worker with the United States Citizenship and Immigration Services  
3 (“USCIS”) seeking to sponsor Dhesinghu Alagarsamy (“Beneficiary”) for an H-1B visa.  
4 (Certified Administrative Record (“CAR”) 169.) Innova’s petition was based on an  
5 employment offer to the Beneficiary to work as a “Solutions Architect,” (CAR 173),  
6 “developing [Innova’s] proprietary software and hardware.” (CAR 190.) Innova  
7 represented that the Beneficiary would work “in-house at [Innova’s] corporate  
8 headquarters in Santa Clara, California.” (CAR 191.) Further, Innova represented that  
9 the employer-employee relationship was traditional, Innova would maintain complete  
10 and autonomous control over various aspects of the Beneficiary’s employment including,  
11 hiring and firing, level of remuneration, hours worked, drug and background screening,  
12 approval of overtime, and would assign him to any project of Innova’s choosing and  
13 assign additional duties as Innova saw fit. (CAR 191.)

14 On June 13, 2018, Defendant, USCIS<sup>1</sup>, sent Innova a Request for Evidence (“RFE”)   
15 requesting additional evidence to establish the requirements for an H-1B visa. (CAR 13.)  
16 Specifically, USCIS requested additional information to establish specialty occupation,  
17 the Beneficiary’s qualifications, and that an employer-employee relationship existed.  
18 (CAR 12-22.) Innova timely responded to the RFE. (CAR 23.) Innova’s response to the  
19 RFE included a cover letter explaining the type of work the Beneficiary would be  
20 engaged in, a description of the Beneficiary’s typical day, a breakdown of Beneficiary’s  
21 typical day by percentage, a “Solutions Supervision & Control Letter, an organizational  
22 chart, a Proof of Concept for the project the Beneficiary would be involved with, Innova’s  
23 tax returns, a lease of the space in Santa Clara where the Beneficiary would work, and an  
24 overview of Innova. (CAR 20-35; 59-135.)

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27 <sup>1</sup> Plaintiff filed this action against Kathy Baran, in her official capacity as the then Director  
28 of the USCIS California Service Center.

1 On September 17, 2018, USCIS denied Innova’s Petition on the grounds that  
2 Innova had failed to establish an employer-employee relationship including  
3 demonstrating that the Beneficiary would be working in-house, and not placed with  
4 third-parties, and demonstrating that Innova had sufficient in-house employment for the  
5 duration of the requested visa period. (CAR 7-10.) Plaintiff filed this action challenging  
6 USCIS’s denial of its Petition as a violation of the Administrative Procedure Act (“APA”).

7 The matter is now before the court on the parties’ cross-motions for summary  
8 judgment. (Dkts. 28, 29.)

## 9 **II. LEGAL STANDARD**

10 Under the APA, a reviewing court shall “hold unlawful and set aside agency  
11 action, findings, and conclusions found . . . arbitrary, capricious, an abuse of discretion or  
12 otherwise not in accordance with the law. . . .” 5 U.S.C. § 706. While the reviewing court  
13 may not “substitute its judgment for that of the agency,” the court “must conduct a  
14 searching and careful inquiry into the facts.” *Nw. Motorcycle Ass’n v. U.S. Dep’t of Agric.*,  
15 18 F.3d 1468, 1471 (9th Cir. 1994). A court may reverse an agency decision only

16 if the agency relied on factors Congress did not intend it to  
17 consider, entirely failed to consider an important aspect of the  
18 problem, offered an explanation that ran counter to the  
19 evidence before the agency, or offered one that is so  
20 implausible that it could not be ascribed to a difference in  
21 view or the product of agency expertise.

22 *Sierra Club v. Bosworth*, 510 F.3d 1016, 1023 (9th Cir. 2007) (quoting *W. Radio Servs. Co. V.*  
23 *Espy*, 79 F.3d 896, 900 (9th Cir. 1996)). “Nevertheless, to withstand review the agency  
24 must articulate a rational connection between the facts found and the conclusions  
25 reached.” *Id.* (alterations and quotations omitted) (citation omitted). The reviewing  
26 court will “defer to an agency’s decision only if it is fully informed and well-considered.”  
27 *Id.* (quotations and citation omitted).

1 On a motion for summary judgment, the reviewing court's function is "to  
2 determine whether or not as a matter of law the evidence in the administrative record  
3 permitted the agency to make the decision it did." *Occidental Engineering Co. v. I.N.S.*, 753  
4 F.2d 766, 769 (9th Cir. 1985).

### 5 **III. DISCUSSION**

6 As a preliminary matter, Innova invites this court to review its website because  
7 USCIS relied on the website in denying Innova's petition. (Plaintiff's MSJ, Dkt. 28, at 10-  
8 12.) In reviewing an administrative agency's decision, the court is limited to the  
9 administrative record and may review material outside of the record in four narrow  
10 circumstances. *Cachil Dehe Band of Wintun Indians of Colusa Indian Cmty. v. Zinke*, 889 F.3d  
11 584, 600 (9th Cir. 2018). Relevant here, a court may review material outside of the record  
12 "where 'the agency has relied on documents not in the record.'" *Id.* (quoting *Sw. Ctr. For*  
13 *Biological Diversity v. U.S. Forest Serv.*, 100 F.3d 1443, 1451 (9th Cir. 1996)). USCIS does not  
14 dispute the court's ability to review Innova's website. (*See* Defendant's Opp., Dkt. 31.)  
15 The court finds that it is appropriate to review Innova's website because USCIS  
16 specifically relied on its contents: "[I]nformation from the petitioner's corporate web-site,  
17 www.innovasolutions.com indicates that the petitioner's main function is to provide IT  
18 solutions and consulting services to other companies," and "In light of the information  
19 from the petitioner's internet web-site that indicates the petitioner's main function is to  
20 Information Technology consulting services . . ." (CAR 8-9.)<sup>2</sup> Thus, the court reviews

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23 <sup>2</sup> In the Reply, Innova also asserts that USCIS violated its own regulations and impeded  
24 its due process by not allowing it an opportunity to respond. (Plaintiff's Reply at 14-15  
25 (citing 8 C.F.R. § 103.2(b)(16)(i) ("If the decision will be adverse to the applicant . . . and is  
26 based on derogatory information considered by the Service and of which the applicant or  
27 petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to  
28 rebut . . .")). It is unclear whether Innova refers to USCIS's reliance on its tax returns or  
on its website. In any event, the tax returns were provided by Innova in response to the  
RFE and Innova expressly directed USCIS to its website for more information about its

1 the administrative record and Innova’s website to determine whether USCIS’s decision  
2 was arbitrary or capricious.

3 The only issue before the court is whether USCIS’s decision to deny Innova’s  
4 petition based on a lack of employer-employee was arbitrary or capricious. USCIS  
5 concluded that Innova had failed to establish a valid employer-employee relationship  
6 with the beneficiary for the duration of the requested period because:

7 [(1)] [I]nformation from the petitioner’s internet web-site [ ]  
8 indicates the petitioner’s main function is to [provide]  
9 Information Technology consulting services to other  
10 companies, [(2)] the insufficiency in the evidence that the  
11 petitioner produces its own software product, and [(3)] the  
12 lack of documentation of any documents between the  
13 petitioner and an end-client . . . .

14 (CAR 9.) Further, USCIS stated that for the reasons above, “USCIS is unable to  
15 determine if the beneficiary will be working on-site on the petitioner’s product or if the  
16 beneficiary will be working off-site at a third-party’s location.” (CAR 9.) The court  
17 reviews each of stated reasons to determine whether there is a rational connection  
18 between the facts found and the conclusions reached. *See Sierra Club*, 510 F.3d at 1023.

19 As to USCIS’s first reason for concluding that Innova failed to establish an  
20 employer-employee relationship, Innova’s website contains information on both its  
21 “Services” and “Solutions.” As to its services, it is apparent that Innova provides  
22 “Information Technology consulting services to other companies.” (*See* CAR 9.) It is also  
23 apparent, however, that Innova’s services to other companies includes using platforms  
24 and software created by Innova. For example, under the “Solutions” portion of the  
25 website there is information about Innova’s Data Science Platform, Agile Cloud Services  
26 Program, Build-Operate-Transfer (BOT) model, and SmartEdge—all Innova created

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28 services, therefore, Innova was aware of the material and USCIS was not required to  
allow it an opportunity to respond. (CAR 190, 70.)

1 software programs and applications. (See <https://www.innovasolutions.com/#!/solutions>.)  
2 This portion of Innova’s website also prominently states: “Our DNA is to passionately  
3 invest in building world-class technology solutions that solve real-world challenges of  
4 our clients. Our solutions redefine how businesses can modernize, innovate, and  
5 compete in the digital world.” *Id.* While it does not appear that Innova sells its in-house  
6 created programs and applications to its clients, the descriptions of the software  
7 programs indicate that they were created by Innova to use while providing services to its  
8 clients. Because USCIS visited Innova’s website and relied on the website as evidence in  
9 making its findings, USCIS may not then ignore evidence on the website contradicting its  
10 position.

11 USCIS’s reason for denial was that Innova failed to provide sufficient evidence to  
12 establish that Innova created its own products in-house. While Innova’s website  
13 provided some evidence that Innova created its own software, Innova was required to  
14 provide sufficient evidence demonstrating an employer-employee relationship with the  
15 Beneficiary and that the Beneficiary would be working in-house and not with a third-  
16 party. USCIS considered (1) Innova’s Proof of Concept PowerPoint presentation  
17 “Blockchains for Corporate Actions” and “Innova Solutions: Business Value Through  
18 Cloud Transformation,” (2) a copy of the lease where the Beneficiary would be working,  
19 and (3) Innova’s tax returns. First, USCIS concluded that the PowerPoint did not  
20 establish “that this product exists, that the petitioner is the company producing it, and  
21 that the beneficiary is expected to work on this product in a particular role.” (CAR 9.)  
22 USCIS further dismissed the PowerPoint because “all information about this possible  
23 ‘Blockchains project’ was submitted by petitioner or by counsel in counsel’s cover letter.”  
24 (CAR 9.) Second, USCIS dismissed the lease because, “[a]lthough . . . the submitted lease  
25 indicates approximately 4500 square feet of rental space . . . it remains unknown if this is  
26 sufficient space to produce the ‘Blockchain’ product, or whether or not such office space  
27 is being used for the development and production of this particular claimed product.”

1 (CAR 9.) Third, USCIS concluded that Innova’s tax returns were “insufficient to establish  
2 that the petitioner produced a product that it sold within those tax years” because Line  
3 Two, the “cost of goods sold” indicated “Zero.” (CAR 9.)

4 The court concludes that USCIS’s explanations described above are implausible  
5 and not a result of its expertise. The Proof of Concept PowerPoint is an explanation of  
6 the scope of the project and its objectives. (CAR 64.) The court acknowledges that the  
7 PowerPoint’s description of the “Blockchain” is highly technical, making it difficult to  
8 understand what precisely the in-house product is meant to do. Additionally, the court  
9 acknowledges that USCIS may assign the PowerPoint less probative weight because it  
10 was created after the RFE was issued. Nevertheless, it was illogical to dismiss the  
11 PowerPoint entirely because there was an absence of printed work published about the  
12 product and because the product was not in Innova’s product portfolio—the product is  
13 nonexistent and would not be on any printed work or in Innova’s portfolio. Innova’s  
14 petition and its submitted documents about the Beneficiary consistently stated that the  
15 Beneficiary was needed to produce the “Blockchain” product. (CAR 190 (description of  
16 the position filed with I-129 stating that “[Beneficiary] will be a Solutions Architect with  
17 us developing our proprietary software and hardware.”; CAR 26 (“[Beneficiary] is  
18 needed to complete the development of Proof of concept . . . The scope of Blockchain for  
19 Corporate Actions project involves the creation of a new blockchain system . . . .”))  
20 Because the software is non-existent, and the Beneficiary is needed to create it, logically  
21 there would not be a published work describing it and it would not be in Innova’s  
22 product portfolio.

23 Further, as to the lease, the RFE specifically suggested “evidence of sufficient  
24 production space and equipment.” (CAR 21.) For this purpose, Innova submitted a lease  
25 showing 4500 square feet of office space. Innova described Beneficiary’s work and from  
26 this description, it is relatively clear that all the Beneficiary would require to perform his  
27 work is enough space for a desk and a computer. It is inconsistent with the evidence for  
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1 USCIS to suggest that 4500 square feet of office space may be insufficient space to  
2 produce the product. (CAR 9.) The court also concludes that there is no rational  
3 connection between USCIS's review of Innova's tax returns and its conclusion that  
4 Innova does not sell any goods. (CAR 9.) Innova submitted its tax returns to  
5 demonstrate that it had sufficient work available for the Beneficiary, not to demonstrate  
6 that it sold goods. (CAR 34 ("To further show that there is work available for [the  
7 Beneficiary], we provide Innova Solutions' 3 most recent tax returns.")) Innova did not  
8 claim to need the Beneficiary to produce a product to sell, rather, Innova explained:  
9 "Blockchain for Corporate Actions is an internally developed project from Innova  
10 Solutions. It is not an end-client project." (CAR 26.) Thus, the evidence submitted  
11 demonstrates that the software was a product to be used in-house to provide "solutions"  
12 to Innova's clients technological needs.

13 USCIS argues that the evidence submitted by Plaintiff raised credibility questions  
14 because of numerous inaccuracies and contradictions. (Defendant's MSJ, Dkt. 29, 18-20.)  
15 The court does not find these purported inaccuracies plausible. First, USCIS identifies an  
16 inaccuracy in Innova's statement that it has 177 employees, CAR 270, and the  
17 organizational chart showing only seven people, CAR 20. However, the organizational  
18 chart does not purport to include *every* employee of the company, it only purports to  
19 show that the Beneficiary will report directly to the Vice President of the company.  
20 USCIS also asserts that Innova's percentage breakdown of a typical day for the  
21 Beneficiary demonstrates that the Beneficiary "may be working 'with client and business  
22 stakeholders.'" (Defendant's Opp. at 1; *see also* Defendant's MSJ at 21.) However, the  
23 percentage breakdown cannot be viewed in isolation. Innova provided a breakdown of  
24 the Beneficiary's typical day, represented the various departments within Innova  
25 Solutions that he would interact with, and also stated that the Beneficiary would  
26 "Clarify[ ] the ambiguities and issues with the Business stakeholders and help[ ] the team  
27 in proper execution of the project." (CAR 27-30.) Taken in context with the descriptions  
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1 of daily tasks performed at the job site, the percentage breakdown shows that the  
2 Beneficiary will be coordinating with clients and business stakeholders on the project *in-*  
3 *house*.

4 Another claimed inconsistency is that Innova’s “own submitted materials of the  
5 job position described how the beneficiary must be willing to travel to various job sites  
6 within the US.” (Defendant’s Opp. at 4 (citing CAR 40, 42.)) However, the Record at 32  
7 states: “As evidence of this[, that employer normally requires a degree for the position],  
8 we attach advertisements that Innova Solutions has issued for the position of software  
9 developer.” (Exhibit A, ‘Position Advertisements’). (CAR 32.) The exhibit USCIS  
10 identifies as demonstrating that the Beneficiary here would be required to travel are in  
11 Exhibit A—an exhibit Innova attached to demonstrate that Innova Solutions always has a  
12 degree requirement. A showing relevant to the requirement of “Specialty Occupation  
13 (CAR 13)—not to demonstrate that Beneficiary’s specific position would require him to  
14 travel. The only inaccuracy or inconsistency that the court can discern in the record is  
15 that Innova’s initial petition titled the Beneficiary’s position as a “Solution Architect”,  
16 CAR 173, and in its organizational chart titled the Beneficiary’s position as “Technical  
17 Architect,” CAR 62. The court concludes that USCIS’s explanations that Innova offered  
18 numerous inconsistencies, is implausible.

19 Upon finding that Innova “mainly” provided services to clients through  
20 placements, USCIS reasonably required evidence to demonstrate that the Beneficiary  
21 would be working in-house. In addition to the evidence discussed above, Innova also  
22 submitted a “Supervision and Control Letter,” (CAR 59), in which Innova and  
23 Beneficiary signed and agreed that Innova has sole control over the Beneficiary’s day-to-  
24 day work, its ability to hire and fire him, and the method of supervision and review of  
25 his work. Considering the record as a whole, the court concludes that USCIS offered an  
26 explanation that ran counter to the evidence and made implausible explanations to  
27 disregard evidence in the record.

1           Reviewing USCIS's reasons for denial and the evidence before it, the court  
2 concludes that USCIS has not articulated a rational connection between the facts found  
3 and the conclusions reached. USCIS's denial of Innova's petition was arbitrary.

4 **IV. CONCLUSION**

5           The court grants Plaintiff's Motion for Summary Judgment and denies  
6 Defendant's Motion.

7 **IT IS SO ORDERED.**

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9 Dated: 11-5-2019

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14 DEAN D. PREGERSON  
15 UNITED STATES DISTRICT JUDGE  
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