

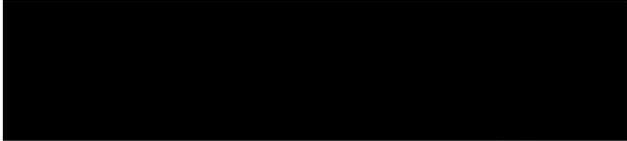


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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: 06 FEB 2002

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)

IN BEHALF OF PETITIONER:



PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was revoked by the Director, California Service Center. A subsequent appeal was dismissed by the Associate Commissioner, Examinations. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted, the previous decisions of the director and the Associate Commissioner will be affirmed and the petition will be denied.

The petitioner is a religious organization. It seeks to employ the beneficiary permanently in the United States as a Korean cook. As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the petitioner had not established that the beneficiary had the required two years of experience as stated on the labor certification. The Associate Commissioner affirmed the director's decision to deny the petition.

On motion, counsel submits a statement and previously submitted evidence.

The Application for Alien Employment Certification (Form ETA 750), indicates that the minimum requirement to perform the job duties of the proffered position is two years of experience in the job being offered. The petitioner submitted a Certificate of Employment for the beneficiary showing that the beneficiary had been employed as a cook at the Eun Hye Prayer House from January 1989 to July 1991.

The Service requested from the American Embassy in Seoul verification of the claimed prior employment of the beneficiary. The American Embassy responded on April 15, 1997 indicating that the investigation of the beneficiary's work experience had been completed and that the alleged place of employment was not a restaurant. The director subsequently issued a Notice of Intent to Deny and the petition was denied by the director. The decision was appealed and denied by the Associate Commissioner.

On motion, counsel submits previously submitted evidence and requests that the Service verify this information and re-instate the approval of the petition.

Upon review, the petitioner has been unable to present sufficient evidence to overcome the findings of the director in her decision to revoke the approval of the petition. The petitioner has not established eligibility pursuant to section 203(b)(3) of the Act and the petition may not be approved.



The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

ORDER: The Associate Commissioner's decision of April 27, 2001 is affirmed. The petition is denied.