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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: EAC 00 143 53194 Office: VERMONT SERVICE CENTER Date:

JUL 12 2002

IN RE: Petitioner:
Beneficiary:



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

Public Copy

IN BEHALF OF PETITIONER:



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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

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

DISCUSSION: The preference visa petition was denied by the Director, Nebraska 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 rejected.

The petitioner is a construction company. It seeks to employ the beneficiary permanently in the United States as a supervisor foreman. The Associate Commissioner determined that the petition was not accompanied by a properly endorsed individual labor certification approved by the Department of Labor, as required by statute.

On motion, counsel provides a copy of Form ETA-750, however, it does not appear to have been certified by the Department of Labor.

8 C.F.R. § 103.1(f)(3)(iii) states in pertinent part:

Appellate Authorities. In addition, the Associate Commissioner for Examinations exercises appellate jurisdiction over decisions on:

(B) Petitions for immigrant visa classification based on employment or as a special immigrant or entrepreneur under §§ 204.5 and 204.6 of this chapter except when the denial of the petition is based upon lack of a certification by the Secretary of Labor under section 212(a)(5)(A) of the Act.

There is no appeal from a denial based on the lack of a certification by the Secretary of Labor.

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 September 19, 2001 is affirmed. The petition is rejected.