



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

[Redacted]

File: [Redacted]

Office: Texas Service Center

Date: Jul 30 2002

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

Petition: Immigrant Petition for Alien Worker as an Other Worker Pursuant to § 203(b)(3)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)(A)(iii).

IN BEHALF OF PETITIONER:

[Redacted]

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 employment-based preference immigrant visa petition was denied by the Director, Texas Service Center, who certified the decision to the Associate Commissioner for Examinations for review. The decision of the director will be affirmed.

The petitioner seeks classification for the beneficiary pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3). The petitioner seeks to employ the beneficiary as a turkey processing line worker. The director found that the petitioner had not provided an Application for Alien Employment Certification, Form ETA-750, certified by the Department of Labor, but instead submitted an uncertified ETA-750 for one Kyung Ryul Park. The director certified his decision to the Associate Commissioner for Examinations for review.

Section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(3), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled or unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

On October 26, 1999, the director requested a photocopy of the original certified ETA-750 and evidence that all prior petitions filed on the ETA-750 had been revoked. The director noted that the petitioner sought to substitute the beneficiary for the beneficiary of a previously approved I-140. After the petitioner responded, however, no evidence that all prior petitions had been revoked was submitted. On December 2, 1999, the director again requested the ETA-750, noting that the Service cannot obtain a copy of the ETA-750 from the Department of Labor because five years had elapsed.

Counsel for the petitioner argued that the initial petition was approved and therefore, the original ETA-750 had been submitted. The director noted that the Service could not verify that the original petition had been approved, only that it had been received. The director further noted that:

This Service cannot assume that because numerous petitions have been filed, they were filed with a copy of a certified ETA-750. The petitioner has not clearly established that an ETA-750 was certified for Kyung Ryul Park, or that subsequent petitions based on that ETA-750 were approved and withdrawn.

On May 30, 2000, the petition was denied and certified to the Associate Commissioner for Examinations for review.

Without any documentation to the contrary, it is concluded that the petitioner has not presented a certified ETA-750 for the position offered. Therefore, the objection of the director has not been

overcome.

8 C.F.R. 103.1(f)(3)(iii)(B) provides that the Associate Commissioner for Examinations exercises appellate jurisdiction over decisions on:

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 § 212(a)(5)(A) of the Act.

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 decision of the director is affirmed. The petition is denied.