



B6

U.S. Department of Justice
Immigration and Naturalization Service

identification data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



File: WAC 93 102 51855 Office: CALIFORNIA SERVICE CENTER

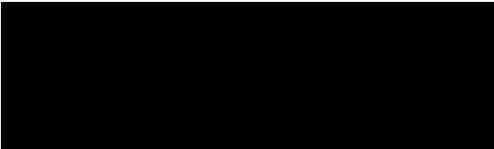
Date: MAY 07 2002

IN RE: Petitioner:
Beneficiary:



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:



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

Melen E Crawford for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was initially approved by the Director, California Service Center. On the basis of new information received and on further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the preference visa petition, and her reasons therefore, and ultimately revoked the approval of the petition on April 9, 2001. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected.

The petitioner is a fashion company. It seeks to employ the beneficiary permanently in the United States as a sewing machine operator. The director 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 appeal, counsel submits a statement.

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. It is noted that the director erroneously allowed the petitioner to file the appeal. The director's error does not, and cannot, supersede the regulation regarding the ability to appeal a denial based upon a lack of certification by the Secretary of Labor. Therefore, the appeal must be rejected.

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 appeal is rejected.