



U.S. Department of Justice
Immigration and Naturalization Service

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PUBLIC COPY

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



File: LIN 01 034 54172 Office: Nebraska Service Center Date:

FEB 27 2003

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:
[Redacted]

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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.

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

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center. The Associate Commissioner for Examinations dismissed a subsequent appeal, affirming the director's decision. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be dismissed, the previous decisions of the director and Associate Commissioner will be affirmed, and the petition will be denied.

The petitioner is a manufacturing/engineering firm. It seeks classification of the beneficiary pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3), and it seeks to employ the beneficiary permanently in the United States as a test equipment operating engineer. The director determined that the petitioner had not established that it had the financial ability to pay the beneficiary the proffered wage as of September 16, 1998, the priority date of the visa petition. The Associate Commissioner affirmed that decision, dismissing the appeal.

On motion, counsel quoted the Service as stating that, ". . . the petitioner's Form's (sic) 941 for December 2000 was not indicative of a company of a company (sic) that cannot meet its financial responsibilities."

In fact, the decision of December 11, 2001, dismissing the petitioner's appeal, does contain the statement, "The Form 941 . . . is not indicative of a company that cannot meet its financial responsibilities." That quote, however, is in the context of a quote of counsel's own assertion on the Form I-290 Notice of Appeal submitted on April 4, 2001. The Service did not make or endorse that statement.

In addition, counsel submits Form 941 quarterly returns for the second, third, and fourth quarters of 1998 and all four quarters of 1999.

8 C.F.R. § 103.5(a) states, in pertinent part:

(2) *Requirements for a motion to reopen.* A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

(3) *Requirements for motion to reconsider.* A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must,

when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

(4) *Processing motions in proceedings before the Service.* A motion that does not meet applicable requirements shall be dismissed.

The 1998 and 1999 quarterly returns are not new evidence. No reason exists to believe that they were previously unavailable. As such, the motion does not meet the requirements applicable to a motion to reopen.

Counsel cites no precedent decisions to establish that the decision of denial was based on an incorrect application of law or Service policy and that the decision was incorrect based on the evidence of record at the time that decision was rendered. As such, the motion does not meet the requirements applicable to a motion to reconsider.

Because the motion does not meet applicable requirements, it shall be dismissed pursuant to 8 C.F.R. § 103.5(a)(4). The previous decisions of the director and the Associate Commissioner will not be disturbed.

ORDER: The motion is dismissed. The Associate Commissioner's decision of is affirmed. The petition remains denied.