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U.S. Department of Justice

Immigration and Naturalization Service

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



Public Copy

File: LIN 99 047 51065

Office: Nebraska Service Center

Date: APR 04 2001

IN RE: Petitioner:  
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:



Identifying data added to prevent clearly unauthorized 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.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the director, who affirmed his previous decision in response to the petitioner's motion. The matter is now before the Associate Commissioner for Examinations on appeal. The director's decision will be withdrawn and the visa petition will be remanded for further consideration.

The petitioner seeks to employ the beneficiary as a civil engineer for a period of sixteen and one-half months.

The director's original denial order is not in the record. In her subsequent decision affirming the director's original determination, it is acknowledged that the petitioner had submitted the documentation requested by the Service. However, the director denied the petitioner's motion because the evidence had not been submitted within a specified period of time. After receiving the documentation requested by the Service and reopening the case on motion, the director should have entered a decision based upon the merits of the case. Consequently, the matter shall be remanded to the director to treat the appeal as a motion. The director is instructed to consider all evidence of record in making her determination.

**ORDER:** The decision of the director is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Commissioner for review.