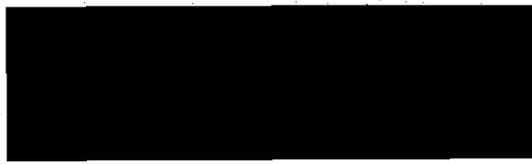




DA

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-99-137-50323 Office: Nebraska Service Center

Date: APR 04 2001

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

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)

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

IN BEHALF OF PETITIONER:
[Redacted]

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, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The director's decision will be withdrawn and the matter will be remanded to him for further action and consideration.

The petitioner is a software development business with eight employees and a gross annual income of \$500,000. It seeks to employ the beneficiary as a programmer/analyst for a period of two and one half years. The director determined the labor condition application submitted by the petitioner did not specify the specific locations where the beneficiary would work. The director further noted that the petitioner failed to submit an employment contract for the corporation where the beneficiary would work.

On appeal, counsel submits a brief.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(i)(b), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,
2. A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay, and

3. Evidence that the alien qualifies to perform services in the specialty occupation.

The labor condition application submitted by the petitioner indicates that the beneficiary will be employed in Dearborn, Michigan.

On appeal, counsel states in part that:

It appears that the decision was attempting to refer to the Department of Labor regulations that deal with the granting of Labor Condition Applications that appear in Title 20 of the Code of Federal Regulations. If this is correct, the petitioner believes that the November 30th decision was also flawed in that it used the 20 C.F.R. 665.715 definition of "place of employment" with[out] any consideration being paid to the definitions reference to "Area of Intended Employment".

The petitioner asserts that the cross-references in the definitions "area of intended employment" and "place of employment" to one another require that the definition of each must be made considered jointly with the other. When viewing the definitions jointly, the petitioner asserts that when multiple work sites falls [sic] within a single MSA (Metropolitan Statistical Area) or within normal commuting distance of a primary work site, all such work sites can be properly designated by reference to one work site with the MSA or commuting distance.

Dearborn, Michigan and Warren, Michigan both fall with the MSA of Metropolitan Detroit...Additionally, Dearborn and Warren are only 15 miles distant from one another, clearly within normal commuting distance.

The petitioner has provided a certified labor condition application and a statement that it will comply with the terms of the labor condition application. In view of the foregoing, the director has overcome the director's objection concerning the labor condition application.

The director has not determined whether the proffered position is a specialty occupation and whether the beneficiary qualifies to perform services in a specialty occupation. Accordingly, the matter will be remanded to him to make such a determination and to review all relevant issues. It is noted that a credentials evaluation service has determined that the beneficiary's foreign degree is equivalent to a bachelor's degree in business administration conferred by an accredited U.S. institution. The director may request any additional evidence he deems necessary. It is noted that requests for contracts should be made only in

those cases where the officer can articulate a specific need for such documentation. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

ORDER: The decision of the director is withdrawn. The matter is remanded to him 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 Associate Commissioner for review.