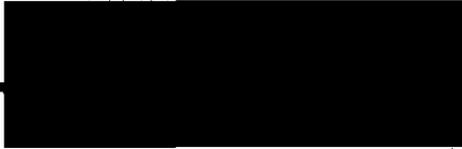




DA

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-99-150-50918

Office: Nebraska Service Center

Date: APR 04 2001

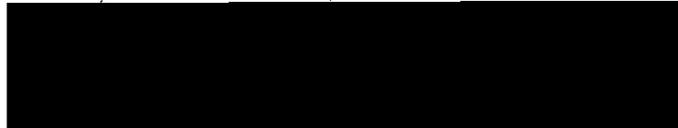
IN RE: Petitioner:  
Beneficiary:



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)

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

IN BEHALF OF PETITIONER:



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 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 consulting and programming services business with 120 employees and a gross annual income of \$6.9 million. It seeks to employ the beneficiary as a programmer analyst for a period of two and one half years. The director determined the petitioner had not submitted a complete itinerary of definite employment and information on any services the beneficiary will perform for the period of time requested. The director further determined that the petitioner had not submitted contracts or business agreements with its client companies.

On appeal, counsel submits a letter from the petitioner's president.

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.

In a letter dated January 25, 2000, the petitioner's president states in part that:

██████████, Inc. is a computer consulting firm. Our business contracts require us to provide the services of qualified computer professionals for short term software development projects at client work-sites or to work on software development projects at our place of business pursuant to contracts with clients or pursuant to in-house marketing schedules. Once a particular consulting project is completed, the contract is effectively over and the employee is then assigned to another project at another client site or to another in-house development project.

Therefore, there is no single location where any ██████████ Systems, Inc. employee will be permanently employed. An employee moves from one client site to another as the need arises.

The nature of the consulting business makes it impossible for us to predict where or when an employee will be assigned after the completion of his/her project. We are certain only of an employee's current location. Furthermore, ██████████ Systems, Inc. has a significant number of existing contracts for your review.

The petitioner has provided a certified labor condition application and a statement that it will comply with the terms of the labor condition application. As such, the petitioner has overcome the objection of the director.

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 the beneficiary holds a bachelor's degree in commerce, rather than a computer-related degree, from a foreign institution. It is also noted that the record does not contain an evaluation of the beneficiary's credentials from a service which specializes in evaluating foreign educational credentials as required by 8 C.F.R. 214.2(h)(2)(iii)(D)(3). The director may request any additional evidence he deems necessary. It is also 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.