

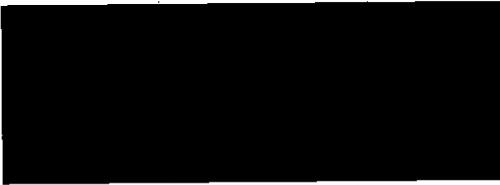


DA

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



File: EAC 99 051 53628 Office: Vermont 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)

Public Copy

IN BEHALF OF PETITIONER:



Identifying data to prevent clearly identified 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
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, Examinations, on appeal. The appeal will be dismissed.

The petitioner is an information technology consulting firm with no employees. It seeks to employ the beneficiary as a programmer for three years. The director determined that the petitioner had not submitted sufficient evidence to clearly establish the firm is a viable business capable of offering the beneficiary a qualifying specialty occupation position.

On appeal, counsel submits a quarterly federal tax return for the first quarter of 1999 and states that the petitioner now has two persons on its payroll. Counsel explains that the petitioner is working in collaboration with a firm named Twin Star Softwares Services, a public limited company based in India. Counsel indicates that the petitioner is currently in the process of devising a business plan, marketing strategies and making sales presentations. Counsel argues that the offered position is a specialty occupation and the beneficiary is qualified to perform the duties of a specialty occupation.

The record shows that the director requested the petitioner to submit a copy of the firm's business lease and copies of documents showing the firm's financial strength and client base. This was a reasonable request bearing directly on the issue of the validity of the petition. In response, the petitioner has submitted a copy of a lease for a guest house facility in the name of a previous employee of the company. The petitioner has not provided additional evidence confirming the firm's financial strength and client base. As the petitioner has not provided the information requested and required for the adjudication of this petition, it may not be approved.

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 sustained that burden.

ORDER: The appeal is dismissed.