



U.S. Department of Justice

Immigration and Naturalization Service

... clearly unwarranted
invasion of personal privacy

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



File: EAC-97-191-52132 Office: Vermont Service Center

Date: 21 DEC 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:



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, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was approved by the Director, Vermont Service Center. Based upon information obtained from a relative of the beneficiary during the issuance process for a derivative visa at the American Embassy, the director determined that the beneficiary was not clearly eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of his intent to revoke approval of the visa petition and his reasons therefore, and ultimately revoked the approval of the petition. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a non-profit organization which seeks to employ the beneficiary as a teacher at its school for a period of three years. The director determined the petitioner had not established that it would pay the beneficiary the prevailing wage during the period of employment.

On appeal, counsel asserts that neither she nor the petitioner were notified of either the Service's intent to revoke the visa petition and the reasons for such revocation.

A review of the record reveals that the Service issued a letter to the petitioner notifying it of the Service's intent to revoke approval of the visa petition and the reasons thereof, on May 26, 2000. The record shows that this letter was mailed to the petitioner in care of its attorney at counsel's address of record. The record further shows that the United States Postal Service returned the letter marked as "not deliverable as addressed unable to forward." On July 12, 2000, the Service mailed a copy of this same letter to the petitioner at its address of record as listed in the initial Form I-129 petition. The record reflects that this letter was not returned by the postal authorities as either unclaimed or undeliverable, and that neither the petitioner nor counsel submitted any response to the letter. Therefore, it must be concluded that Service properly served the notice of intent to revoke to both counsel and the petitioner pursuant to 8 C.F.R. 103.5a. Furthermore, it must be noted that counsel failed to inform the Service of any subsequent change in her address of record prior to the receipt of the appeal on February 27, 2001.

8 C.F.R. 103.3(a)(1)(v) states that an officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

On appeal, counsel fails to identify any erroneous conclusion of law or statement of fact for the appeal. As the petitioner has provided no additional evidence on appeal to overcome the decision of the director, the appeal will be summarily dismissed in accordance with 8 C.F.R. 103.3(a)(1)(v).

In visa petition proceedings, the burden of proof remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met. In accordance with 8 C.F.R. 103.3(a)(1)(v), the appeal will be summarily dismissed.

ORDER: The appeal is dismissed.