



U.S. Department of Justice

Immigration and Naturalization Service

DR

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

[Redacted]

File: EAC-00-254-50908

Office: Vermont Service Center

Date: **DEC 21 2001**

IN RE: Petitioner:
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)

IN BEHALF OF PETITIONER:

[Redacted]

Public Copy

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, 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 appeal will be dismissed.

The petitioner seeks to employ the beneficiary as a sales manager for a period of three years. The director determined the petition could not be approved because the petitioner had not submitted an approved labor condition application.

On appeal, counsel submits a case information sheet from the Department of Labor indicating that a labor condition application had been certified for a sales director position with the petitioner on June 24, 2000. Counsel contends that the document submitted was included with the initial petition and is a "...Labor Condition Application, properly endorsed by the Department of Labor,..."

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 petitioner was required by regulation to provide either an approved labor condition application from the Department of Labor (DOL) or certification that such application had been filed. Neither document was initially submitted.

On November 13, 2000, the director issued a notice to counsel which requested that the petitioner submit additional documentation in support of the petition, including a certification from the DOL that the Labor Condition Application (Form ETA 9035) has been properly filed, completed and endorsed by the DOL. While counsel did respond to the Service's notice, a certified labor condition application was not included. Instead counsel submitted a three page case report which indicates that a labor condition application had been certified for the petitioner for a sales director position by the DOL on June 24, 2000. Therefore, the director denied the petition because the record did not contain sufficient and proper documents to establish the petitioner's compliance with 8 C.F.R. 214.2(h)(4)(iii)(B)(1).

Counsel's statements on appeal are not persuasive. While counsel submits another copy of a single page of the case report noted above, the case report is not an acceptable substitute for a certified labor condition application. Counsel fails to provide any reasonable explanation as to why the petitioner has failed to submit either an approved labor condition application from the DOL or certification that such application had been filed. The petitioner has not overcome the objections of the director because the record as it is presently constituted does not contain a certified labor condition application. For this reason the petition 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.