



U.S. Department of Justice  
Immigration and Naturalization Service

*DR*

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



**Public Copy**

File: LIN 99 048 50809 Office: Nebraska Service Center Date:

**FEB 28 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)

IN BEHALF OF PETITIONER



*Identification data used to prevent clearly unwarranted 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 The appeal will be withdrawn and the matter remanded to the director for further action and consideration.

The petitioner is a computer consulting firm which seeks to employ the beneficiary as a programmer analyst for a period of two years and ten months. The director determined that the evidence of the beneficiary's employment experience and/or educational credentials were not genuine and denied the visa petition.

On appeal, counsel argues that the petitioner was not afforded an opportunity to respond to the director's letter regarding the investigation that the Consulate had conducted regarding the beneficiary's credentials.

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.

The substantive issues of this proceeding will not be discussed at this time. Evidence of fraud is not a part of this record as it is presently constituted. In addition, the director has not explained why the question of experience is pertinent in this proceeding.

Accordingly, the matter will be remanded to the director to place the pertinent evidence in the record and to explain the significance of it. In addition, the director may consider all aspects of the petition and request any additional evidence she considers relevant. The petitioner may also provide additional documentation within a reasonable period of time to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

**ORDER:** The matter is remanded to the director for further action and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for Examinations for review.