

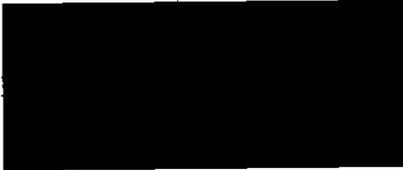


U.S. Department of Justice

Immigration and Naturalization Service

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



Public Copy

File: LIN 98 212 52597 Office: Nebraska Service Center Date:

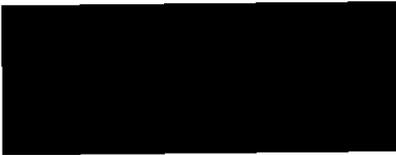
FEB 28 2001

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 card required 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, 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 decision of the director will be withdrawn and the matter will be remanded.

The petitioner seeks to continue to employ the beneficiary as a product design engineer for an additional two-year period. The director determined the petition could not be approved because the beneficiary's previously awarded valid H-1B status expired on June 1, 1998 while the certified labor condition application was valid from August 7, 1998 through July 1, 2000, leaving a gap from June 1, 1998 to August 7, 1998 when the beneficiary was not in a valid H-1B status.

On appeal, counsel acknowledges that the cited gap in approved employment occurred, but requests that the director approve the petition on a discretionary basis.

In this case, the denial of the visa petition and the appeal argument raised by counsel only address the issue of the beneficiary's extension of status in H-1B status.

Service regulations at 8 C.F.R. 214.1(c)(5) state:

Decision in Form I-129 or I-539 extension proceedings.
Where an applicant or petitioner demonstrates eligibility for a requested extension, it may be granted at the discretion of the Service. There is no appeal from the denial of an application for extension of stay filed on Form I-129 or I-539.

It is emphasized that the director has the discretion to reconsider this matter and to grant the requested extension.

ORDER: The director's order of June 19, 1999 is withdrawn. This matter is remanded for further consideration.