



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



File: WAC-97-206-52054 Office: California Service Center

Date: JAN 11 2001

IN RE: Petitioner: [Redacted]
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)

Public Copy

IN BEHALF OF PETITIONER:



Identifying data should be
prevent clearly documented
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

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner for Examinations on motion to reopen and reconsider. The motion will be granted. The previous decision of the Associate Commissioner will be affirmed.

The petitioner is an ammunition manufacturer with ten employees and zero gross annual income. It seeks to employ the beneficiary as a station engineer for a period of three years. The director determined the petitioner had not submitted a certified Form ETA 9035 or evidence that the beneficiary held a college degree.

On appeal, counsel submitted additional information and argued that the petitioner was in the process of applying for an ETA 9035 certificate.

The Associate Commissioner dismissed the appeal reasoning that the petitioner had not submitted a certified labor condition application in accordance with Service regulations at 8 C.F.R. 214.2(h)(4)(i)(B)(1). The Associate Commissioner also found, beyond the decision of the director, that the petitioner had not demonstrated that the proffered position was a specialty occupation or that the beneficiary qualified to perform the services of a specialty occupation.

On motion, counsel had indicated that a brief and/or additional evidence would be submitted in support of the motion on or before March 2, 1999. To date, no brief or additional evidence has been received. As such, the record must be considered complete.

Title 8 C.F.R. 103.5(a)(2) states that a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

On motion, counsel indicates that the motion is based on ineffective assistance from the petitioner's prior counsel, but fails to identify any erroneous conclusion of law or statement of fact for the motion. As the petitioner has provided no additional evidence on motion to overcome the decision of the director, the motion will be dismissed in accordance with 8 C.F.R. 103.5(a)(4).

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. In accordance with 8 C.F.R. 103.5(a)(4), the motion will be dismissed.

ORDER: The motion is dismissed. The decision of the Associate Commissioner dated January 4, 1999, is affirmed.