



U.S. Department of Justice  
Immigration and Naturalization Service

D2

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



File: WAC 99 058 51309 Office: California Service Center

Date: JAN 25 2001

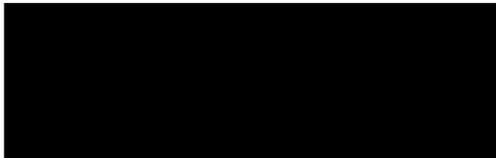
IN RE: Petitioner:  
Beneficiary:



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:



Identification data deleted 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

Mary C. Mulrean, Acting Director  
Administrative Appeals Office

**DISCUSSION:** Approval of the nonimmigrant visa petition was revoked by the director after appropriate notice. The matter is now before the Associate Commissioner for Examinations on appeal. The director's decision will be withdrawn and the matter remanded to her for further action and consideration.

The petitioner is a firm which designs, develops, and maintains computer systems. It seeks to employ the beneficiary as a programmer for a three year period. The director determined that the petitioner had not provided certified labor condition applications for the various job sites at which the beneficiary will work.

The director has also introduced the concept of "speculative employment" into this proceeding. There is no support for the exploration of this concept per se in either statute or regulations. Similarly, the director has questioned the petitioner's ability to pay the beneficiary's offered wage. Wage determinations and the enforcement of their payment with respect to the H-1B classification are the responsibility of the Department of Labor.

On appeal, counsel argues that the petitioner has complied with pertinent regulations.

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 the equivalent) as a minimum for entry into the occupation in the United States.

The substantive issues of this proceeding will not be addressed at this time. The matter is remanded to the director in order for her to evaluate the beneficiary's qualifications to perform services in a specialty occupation and to determine if the proffered position is a specialty occupation. It is noted that the director must again inform the petitioner of her intent to revoke approval of the petition if this proceeding is broadened in accordance with the foregoing.

**ORDER:** The decision of the director is withdrawn. The matter is remanded to her for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for review.