



U.S. Department of Justice

Immigration and Naturalization Service

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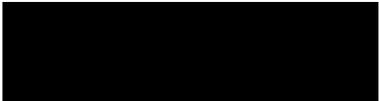
OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: WAC-99-244-50350 Office: California Service Center

Date: JAN 25 2001

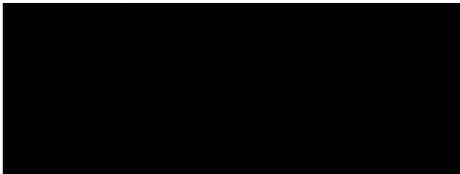
IN RE: Petitioner:
Beneficiary:



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: The director approved the nonimmigrant visa petition and denied the request for a change of status. The matter is now before the Associate Commissioner for Examinations on appeal. The Associate Commissioner lacks jurisdiction over this case. 8 C.F.R. 103.1(f)(3)(iii). The matter will be remanded to the director for treatment as a motion.

The petitioner is an importer and distributor of plush toys with 30 employees and \$1.4 million gross annual income. It seeks to employ the beneficiary as an applications programmer for a period of three years. The director determined the beneficiary was ineligible for a change of status, as she had not maintained her nonimmigrant status.

On appeal, counsel argues that the beneficiary's nonimmigrant status was valid as of the filing date of the petition.

In her decision dated October 18, 1999, the director found that the beneficiary had not maintained her nonimmigrant status because her authorized stay expired prior to the filing of the present petition. The director advised the petitioner that if the petitioner believed the law was inappropriately applied or that the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, the petitioner, within 30 days, could file a motion to reconsider in accordance with 8 C.F.R. 103.5(a)(1)(i).

8 C.F.R. 103.5(a)(3) requires that a motion to reconsider state the reasons for reconsideration; and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

On November 17, 1999, counsel for the petitioner filed an appeal in this matter. Pursuant to 8 C.F.R. 248.3(g), there is no provision for an appeal from the denial of a change of status.

As the additional information was filed by the petitioner within 30 days of the director's decision dated October 18, 1999, the petitioner's appeal will be remanded to the director to be treated as a motion.

ORDER: The appeal is remanded to the director to be treated as a motion.