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U.S. Department of Justice
Immigration and Naturalization Service

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



JUL 3 2001

File: LIN-00-090-51512 Office: Nebraska Service Center Date:

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 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

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 for Examinations on appeal. The appeal will be dismissed.

The petitioner is a computer services business with two employees and a gross annual income of \$714,471. It seeks to employ the beneficiary as a customer engineer for a period of two years and four months. The director determined the petitioner had not submitted the exact dates of employment and the names and addresses of the location(s) where the beneficiary's services will be performed.

On appeal, counsel submits a brief.

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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,
2. A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay, and
3. Evidence that the alien qualifies to perform services in the specialty occupation.

The petitioner has provided a certified labor condition application and a statement that it will comply with the terms of the labor condition application.

On appeal, counsel argues in part that the director did not previously make a specific request for the beneficiary's itinerary and therefore cannot punish the petitioner now for having failed to provide that which he was not asked to present. Counsel also states that the request made by the director was arbitrary and capricious.

A review of the record demonstrates that in the director's request for evidence dated April 13, 2000, the requested documentation included the duration and venue of the beneficiary's proposed work projects. Thus, an itinerary for the beneficiary had been properly requested by the director in accordance with 8 C.F.R. 214.2(h)(2)(i)(F). Since this information has not been submitted, it is concluded that the petition may not be approved.

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. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.