



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



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File: LIN-00-073-51281 Office: Nebraska Service Center

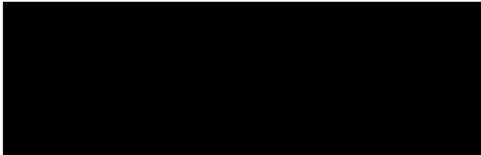
Date:

JUL 19 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)

IN BEHALF OF PETITIONER:



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.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann

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 petition will be remanded to the director for entry of a new decision consistent with the foregoing.

The petitioner is an intermodal transportation business with 50,000 employees and a gross annual income of \$18 billion. It seeks to employ the beneficiary as an export agent. The director determined the petitioner had not established that the proffered position is a specialty occupation.

Counsel did not appeal the director's decision. Instead, counsel submitted a motion to reopen and reconsider, which was received by the director on September 11, 2000.

The Administrative Appeals Office (AAO) has jurisdiction to consider an appeal that is filed pursuant to the denial of a petition. See. 8 C.F.R. 103.3. The appropriate form to be used for an appeal in this type of petition is the Notice of Appeal (Form I-290B). Instead of filing a Form I-290B, however, counsel filed a motion to reopen and reconsider, which is permitted under 8 C.F.R. 103.5. As no Form I-290B has been filed, the AAO does not have jurisdiction to consider the motion to reopen and reconsider.

Accordingly, the record shall be remanded to the director to consider the petitioner's evidence on motion. The director will determine whether the petitioner has met the eligibility requirements under section 101(a)(15)(H) of the Act, and may request any additional evidence deemed necessary to assist him with his determination. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The petition is remanded to the director to consider the motion to reopen and reconsider.