



U.S. Department of Justice
Immigration and Naturalization Service

DZ

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



File: LIN-99-038-50942 Office: Nebraska Service Center

Date: JUN 7 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:



Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

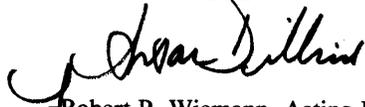
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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 and subsequent motion to reopen were denied by the director. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a software consultancy business with 13 employees and a gross annual income of \$1,000,000. It seeks to employ the beneficiary as a programmer analyst for a period of three years. The director determined that the labor condition application submitted by the petitioner did not contain dates of exact employment and the names and addresses of the location(s) where the beneficiary's services would be performed. The director further determined that the petitioner had not submitted a supporting employment contractual agreement for the beneficiary.

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. This application shows that the beneficiary would be employed for a three year period at 29200 Southfield Rd., Suite 200A, Southfield, MI 48076.

On appeal, counsel states in part that:

The Beneficiary will work off site at the Amerisoft Corporation located at 24623 Halsted Rd., Farmington Hills, Michigan. [REDACTED] President of Amerisoft Corporation, in a letter [REDACTED] of United Information Technology, Inc. requests the services of [the beneficiary] as a Programmer Analyst for a period of one year. A detailed list of the job duties that [the beneficiary] will perform is enumerated in the letter.

After the initial year of service at Amerisoft Corporation, [the beneficiary] will work for United Information Technology at their facility located at 29200 Southfield Road, Suite 200A, Southfield, Michigan on an on-going e-commerce project. The project will take him to the end of the H-1B approval period of two years. This itinerary is outlined in the letter signed by [REDACTED] [REDACTED] President of United Information Technology, Inc. and dated April 11, 2000.

Despite the itinerary listed above and the letter from Amerisoft Corporation, the petitioner has not submitted an employment contract from Amerisoft Corporation as requested by the director. Therefore the petition may not be approved.

Beyond the decision of the director, the record does not contain an evaluation of the beneficiary's credentials from a service which specializes in evaluating foreign educational credentials as required by 8 C.F.R. 214.2(h)(4)(iii)(D)(3). It is noted that the beneficiary holds a bachelor of science degree from an Indian institution; his college transcripts, however, reflect no computer courses taken. As this matter will be dismissed on the grounds discussed, this issue need not be examined further.

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.