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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



File: EAC-00-069-54378

Office: Vermont Service Center

Date: JUN 8 2001

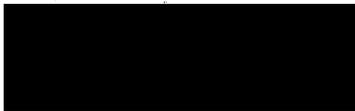
IN RE: Petitioner:
Beneficiary:



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 was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is a public library with more than 1,500 employees and a budget of more than \$55 million. It seeks to employ the beneficiary as a librarian for a period of two years. The director determined the petitioner had not established that it was not required to pay the additional \$500 filing fee as required under section 414(a) of ACWIA, as it had not demonstrated that it qualified as an exempt organization as a nonprofit organization or entity related to or affiliated with an institution of higher education, as defined under 8 C.F.R. 214.2(h)(19)(iii).

On appeal, counsel submits a brief.

8 C.F.R. 214.2(h)(19)(iii)(B) provides in part that a nonprofit entity (including but not limited to hospitals and medical or research institutions) that is connected or associated with an institution of higher education, through shared ownership or control by the same board or federation operated by an institution of higher education, or attached to an institution of higher education as a member, branch, cooperative, or subsidiary is not required to pay the additional fee.

On appeal, counsel states in part that:

As The [REDACTED] by statute is a "Member" of the University of the State of New York, this qualifies the [REDACTED] for the fee waiver. In addition, as both the University of the State of New York and the [REDACTED] Public Library are controlled by the same Board of Regents, this also qualifies petitioner for the fee waiver. Furthermore, as [REDACTED] is attached to numerous institutions of higher education through **cooperative** venture, this further qualifies the petitioner for the fee waiver. Finally, Petitioner also qualifies for the fee waiver as the [REDACTED] is attached to institutions of higher education as **part** of the educational program of Colleges and Universities in providing **accredited** coursework which leads to a graduate **degree**.

Counsel has submitted sufficient evidence to establish that the petitioner is not required to pay the additional \$500 filing fee as required under section 414(a) of [REDACTED]. The petitioner has demonstrated that it qualifies as an exempt organization as a nonprofit organization or entity related to or affiliated with an institution of higher education, as defined under [REDACTED].

214.2(h)(19)(iii). In view of the foregoing, it is concluded that the petition may 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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.