



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: LIN 99 248 50044 Office: Nebraska Service Center Date: **MAR - 7 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: [Redacted]

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

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DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner, Examinations, on appeal. The appeal will be dismissed.

The petitioner is a computer consulting and software development firm employing three persons. It seeks to employ the beneficiary as a programmer analyst for a period of two years and ten months. The director noted that the petitioner had not submitted an explanation as to why the firm was using three different addresses during the same period or evidence of where the business was actually located. The director found that the petitioner did not explain why they were using the address of 29217 Ford Road on April 16, 1999 even though the lease for the premises at that address became effective on August 1, 1999. The director found that due to the discrepancies in the evidence provided, the petitioner had not established that it is a bona fide US employer with a specialty occupation position available for the beneficiary.

On appeal, counsel states that the director wrongly denied the petitioner's petition based on its own negligence in failing to ask that the information be provided and subsequently denying the petitioner on those grounds. Counsel further states the director wrongly denied the petitioner's petition based on its determination that the petitioner had not established that it is a bona fide U.S. employer with a specialty occupation position available for the beneficiary. Counsel asserts that the previously submitted evidence along with the additional evidence supplied with this appeal clearly establish that the petitioner is a bona fide U.S. employer with a special occupation position available for the beneficiary. Counsel argues that the offered position is a specialty occupation and the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, the petitioner has still not provided all the evidence required.

The petitioner has not adequately explained why the firm was using the address on 29217 Ford Road on April 16, 1999 prior to acquiring the property for a business premise by lease on August 1, 1999. This was a reasonable finding by the director bearing directly on the issue of the validity of the petition. As the petitioner has not overcome the director's concerns about the discrepancies in the evidence provided for the adjudication of this petition, it 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.

ORDER: The appeal is dismissed.