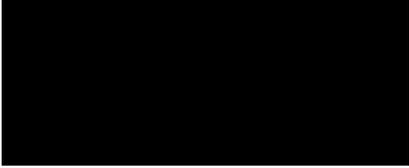




U.S. Department of Justice  
Immigration and Naturalization Service

**D2**

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



File: WAC 99 152 52644 Office: California Service Center Date: **MAR - 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)

IN BEHALF OF PETITIONER:

Whereby 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

**PUBLIC COPY**

Robert P. Wiemann, Acting Director  
Administrative Appeals Office

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

The petitioner seeks to employ the beneficiary as a production manager for a nineteen-month period. The director determined the petition could not be approved because the petitioner had not submitted an approved labor condition application.

On appeal, counsel acknowledges that the certified labor condition application was provided late. Counsel states that the errors of previous counsel caused the labor condition application to be late and requests that the petition be approved.

The petitioner was required by regulation to provide either an approved labor condition application from the Department of Labor or certification that such application had been filed. Neither document was initially submitted.

The record now contains an approved labor condition application. However, the application was certified on October 26, 1999, a date subsequent to May 3, 1999, the filing date of the visa petition. Regulations at 8 C.F.R. 214.2(h)(4)(i)(B)(1) provide that before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application. Since this has not occurred, it is concluded that the petition may not be approved.

**ORDER:** The appeal is dismissed.