

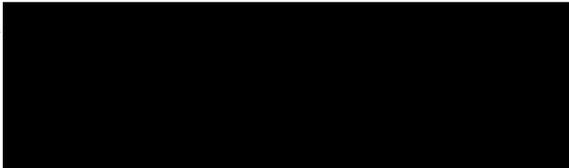


U.S. Department of Justice

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: WAC 99 104 50535 Office: California Service Center

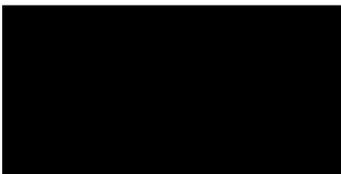
Date: MAR - 7 2001

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:



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, California Service Center. A subsequent motion to reopen was dismissed by the director. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner initially sought to employ the beneficiary as a physical therapist for a three-year period. The director noted that the petitioner now seeks to employ the beneficiary as a medical researcher. The director determined the petitioner had not established that the beneficiary qualifies to perform the services of the offered position.

On appeal, counsel states that the beneficiary need not possess a license to practice in the profession of medical technology because the beneficiary's duties only involve the study and development of medical theories and are not clinical in nature.

Based on the information provided by the petitioner on appeal and by the director in her latest order, it is determined that there have been material changes in the terms and conditions of the beneficiary's employment with the firm. The petition should not be considered as being for a physical therapist, but for the position of medical researcher.

Because the circumstances stated in the initial petition have changed significantly, the certified labor condition application for a physical therapist submitted by the corporation is no longer applicable for the modified petition. However, a new petition reflecting the new position accompanied by a new certified labor condition application may be presented to the director for consideration. Should the director deny the new petition, that decision could then be appealed to this jurisdiction. The Administrative Appeals Unit does not make initial determinations on visa petitions.

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.