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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

[Redacted] Public Copy

File: LIN 99 215 51607 Office: Nebraska Service Center Date: MAY 2 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

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 an insurance agency. It seeks to employ the beneficiary as an insurance agent for a period thirty months. The director determined the petitioner had not established that the job offered qualifies as a specialty occupation.

On appeal, the petitioner states that important changes have taken place in insurance marketing, especially in the field of automation, and that the offered position should now be considered a specialty occupation. The petitioner explains that the beneficiary's duties have changed significantly as the company has expanded in the past year. The petitioner further states that the beneficiary has been promoted from his prior position as Insurance Counselor to the more involved role of Internet Development Specialist. The petitioner indicates that the beneficiary is qualified to perform the duties of a specialty occupation.

Upon initial submission, the petitioner stated that the beneficiary would be employed as an insurance agent. On appeal, it is indicated that he will be employed in a more involved role as an internet development specialist. This represents a substantial change since the initial filing. In such a case, the regulations require the petitioner to file an amended or new petition, with fee, to the office where the original petition was filed to reflect these changes. In the case of an H-1B petition, this requirement includes obtaining a new labor condition application from the Department of Labor. 8 C.F.R. 214.2(h)(2)(i)(E).

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.