



*DR*

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



**PUBLIC COPY**

File: LIN 00 138 53497 Office: Nebraska Service Center

Date:

**NOV 6 2001**

IN RE: Petitioner:  
Beneficiary:



Petition: Petition for Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(ii)(a)

IN BEHALF OF PETITIONER: Self-represented

*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. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner for Examinations on a motion to reopen and reconsider. The motion will be dismissed as untimely filed.

The petitioner is a farming and ranch operation. It seeks to employ the beneficiary as a ranch hand for an indefinite period. The petition was not accompanied by the required temporary agricultural labor certification, ETA-750. The director determined that absent the certification, the petitioner failed to meet the regulatory requirements necessary for approval of the petition. The director also determined that the petitioner had not established that the need for the services to be performed is temporary.

On motion, the petitioner has still not provided the temporary agricultural labor certification.

8 C.F.R. 103.5(a)(1)(i) states in pertinent part that any motion to reconsider an action by the Service must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before the Service must be filed within 30 days of the decision that the motion seeks to reopen. Further, 8 C.F.R. 103.5(a)(4) states, in pertinent part, that the Service shall dismiss any motion that does not meet applicable requirements.

The record reflects that the Associate Commissioner's decision of January 29, 2001 was sent to the petitioner at his address of record. The motion to reopen and reconsider was received by the Service 66 days later on April 5, 2001. The motion to reopen and reconsider was untimely filed. For this reason, the motion is dismissed.

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 motion is dismissed.