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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

**PUBLIC COPY**



File: EAC-99-088-52003 Office: Vermont Service Center

Date: NOV 6 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:



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 approved by the Director, Vermont Service Center. Based upon information obtained from the beneficiary during her visa issuance process at the American Embassy, the director determined that the beneficiary was not clearly eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of his intent to revoke approval of the visa petition and his reasons therefore, and ultimately revoked the approval of the petition. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a cooperative of retail travel agencies with 22 employees and a gross annual income of more than \$5 million. It seeks to employ the beneficiary as an administrative assistant for a period of three years. The director determined the petitioner had not established that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, counsel submits a statement.

The director revoked the petition because the officer's report from the U.S. Embassy in Kiev indicates that due to the beneficiary's insufficient knowledge of English, the beneficiary would likely have great difficulty functioning as an administrative assistant. On appeal, counsel states in part that the proffered position is not a clerical position that involves typing skills.

In a letter dated January 8, 1999, the petitioner's vice-president states in part that:

In addition to that, the job requires communication skills for writing and speaking in a clear, concise terms [sic] which skills are generally associated with a college graduate in Business or the Arts.

The consular officer's report indicates that due to the beneficiary's insufficient knowledge of English, she was unable to answer basic questions posed to her during her interview at the U.S. Embassy in Kiev. The record contains no information that overcomes the consular officer's finding that the beneficiary is incapable of performing the proposed duties of the proffered position. As such, the petitioner has not established that the beneficiary qualifies to perform services in a specialty occupation. For this reason, the petition 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. Accordingly, the decision of the director will not be disturbed.

**ORDER:** The appeal is dismissed.