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U.S. Department of Justice

Immigration and Naturalization Service

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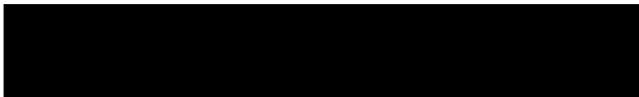
OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC-01-123-52080 Office: Vermont Service Center

Date: APR 30 2002

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:

SELF-REPRESENTED

PUBLIC COPY

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, Director
Administrative Appeals Office

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

The petitioner states that it is a nonprofit organization which offers weekend educational enrichment programs in Japanese language and culture for kindergarten, elementary, middle, and high school students at schools located in North Bethesda, Maryland and in McLean, Virginia. It has 37 employees and a gross annual income of \$581,848. The petitioner seeks to employ the beneficiary as an assistant kindergarten teacher at its school in Garrett Park, Maryland, for a period of three years. The director determined the petitioner had not established that the proffered position of assistant kindergarten teacher is a specialty occupation.

On appeal, the petitioner states that the title of the proffered position has been changed from that of assistant kindergarten teacher to that of kindergarten teacher. The petitioner submits an amended Form I-129 petition and an amended ETA Form 9035 labor condition application which was certified by the Department of Labor on January 23, 2001. The petitioner also submits a copy a portion of the publication Requirements for Certification of Teachers, Counselors, Librarians, Administrators for Elementary and Secondary Schools, Sixty-fifth Edition, 2000-2001, relating to certification requirements for preschool teachers in the State of Maryland.

It is determined that there have been material changes in the terms and conditions of the beneficiary's proposed employment with the petitioner. The title of the position, the duties of the position, and the salary to be paid to the beneficiary have all been changed. In such a case, the regulations require the petitioner to file an amended or new petition, with fee, with the Service Center where the original petition was filed to reflect these changes. An amended H-1B petition must be accompanied by a new labor condition application from the Department of Labor. See: 8 C.F.R. 214.2(h)(2)(i)(E).

In this case, the petition may not be approved because the petitioner has not filed the amended petition and labor condition application with the Service Center where the original petition was filed as required by 8 C.F.R. 214.2(h)(2)(i)(E).

ORDER: The appeal is dismissed.