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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: WAC-01-067-53090 Office: California Service Center

Date: **DEC 13 2002**

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:



PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 that 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 visa petition was denied by the Director, California Service Center. The matter is now before the Associate Commissioner for Examinations. The petition will be remanded to the director for consideration of the motion to reconsider.

The petitioner is a professional air show with three employees and a gross annual income of \$290,000. It seeks to employ the beneficiary as a U.S. commercial pilot. The director determined the petitioner had not established that the proffered position is a specialty occupation.

Counsel did not appeal the director's decision. Instead, counsel submitted a motion to reconsider, which was received by the director on September 18, 2002.

The Administrative Appeals Office (AAO) has jurisdiction to consider an appeal that is filed pursuant to the denial of a petition. See. 8 C.F.R. 103.3. The appropriate form to be used for an appeal in this type of petition is the Notice of Appeal (Form I-290B). Instead of filing a Form I-290B, however, counsel filed a motion to reconsider, which is permitted under § 103.5. As no Form I-290B has been filed, the AAO does not have jurisdiction to consider the motion to reconsider.

Accordingly, the record shall be remanded to the director to consider the petitioner's evidence on motion. The director will determine whether the petitioner has met the eligibility requirements under section 203(b)(1)(C) of the Act, and may request any additional evidence deemed necessary to assist her with her determination. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The petition is remanded to the director to consider the motion to reconsider.