



U.S. Department of Justice
Immigration and Naturalization Service

DZ

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

PUBLIC COPY



File: EAC-01-223-54109 Office: Vermont Service Center

Date:

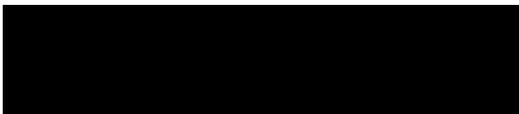
DEC 27 2002

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:



**prevent clearly unwarranted
invasion of personal privacy**

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 nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The petition will be remanded to the director for entry of a new decision.

The petitioner is a business engaged in the sale of auto accessories over the internet. The petitioner has four employees and a projected gross annual income of \$600,000. It seeks to employ the beneficiary as a web developer/designer for a period of three years. The director denied the petition due to abandonment. The director advised the petitioner that his decision was not appealable, as denials based on abandonment may not be appealed. 8 C.F.R. 103.2(b)(15). The director did, however, advise the petitioner that it could file a motion to reopen in accordance with 8 C.F.R. 103.5(a)(2).

The Administrative Appeals Office lacks jurisdiction over motions to reopen filed in response to denials based on abandonment. Jurisdiction over such motions rests with the director. 8 C.F.R. 103.5(a)(1)(ii). Therefore, this matter will be remanded to the director for a determination as to the evidence submitted meets the requirements of a motion set forth at 8 C.F.R. 103.5(a)(2).

ORDER: The petition is remanded to the director in accordance with the foregoing.