

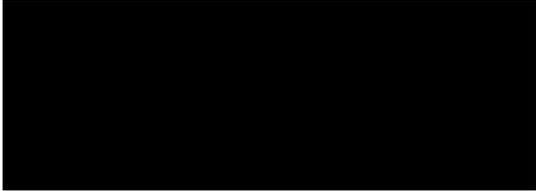


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U.S. Department of Justice
Immigration and Naturalization Service

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



File: EAC-01-002-50354 Office: Vermont Service Center Date: 4 FEB 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)

PUBLIC COPY

IN BEHALF OF PETITIONER:
[Redacted]

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 and is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected.

The petitioner is an elementary school with 25 employees and a gross annual income of \$880,453. It seeks to employ the beneficiary as a first grade teacher for a period of 26 months. The director determined that although the petitioner had established that it is a non-profit organization, it had not established that it is related or affiliated with an institution of higher education and therefore exempt from paying the additional American Competiveness and Workforce Improvement Act (ACWIA) filing fee of \$500.

On appeal, counsel submits additional evidence.

8 C.F.R. 214.2(h)(19)(iii) provides, in part, that the following exempt organizations are not required to pay the additional \$500 fee:

(A) *An institution of higher education*, as defined in section 101(a) of the Higher Education Act of 1965;

(B) *An affiliated or related nonprofit entity*. A nonprofit entity (including but not limited to hospitals and medical or research institutions) that is connected or associated with an institution of higher education, through shared ownership or control by the same board or federation operated by an institution of higher education, or attached to an institution of higher education as a member, branch, cooperative, or subsidiary;

(C) *A nonprofit research organization or governmental research organization*. A nonprofit research organization is an organization that is primarily engaged in basic research and/or applied research. A governmental research organization is a United States Government entity whose primary mission is the performance or promotion of basic research and/or applied research...

On appeal, counsel states, in part, that the petitioner is exempt from paying the additional ACWIA fee of \$500 because it is a primary or secondary educational institution. Counsel has not demonstrated, however, that the petitioner falls within one of the categories described above. Therefore, the petitioner has not demonstrated that it is exempt from paying the additional ACWIA fee of \$500.

8 C.F.R. 103.2(a)(7)(i) states in part that:

An application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. Rejected applications and petitions, and ones in which the check or other financial instrument used to pay the filing fee is subsequently returned as nonpayable will not retain a filing date.

This petition should have been rejected by the director as improperly filed. There is no provision for an appeal from an improperly filed petition.

As the record indicates that the petition was improperly filed, the petitioner's appeal will be rejected.

ORDER: The appeal is rejected.