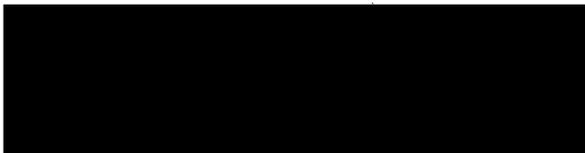




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U.S. Department of Justice  
Immigration and Naturalization Service

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



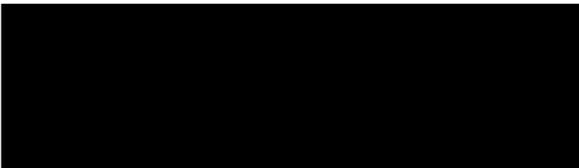
File: EAC 99 049 50598 Office: Vermont Service Center Date: 9 JAN 2002

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)

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy.

IN BEHALF OF PETITIONER:



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:** Approval of the nonimmigrant visa petition was revoked by the director after appropriate notice. The matter is now before the Associate Commissioner for Examinations on appeal. The matter will be remanded to the director for further action and consideration.

The petitioner is a software consulting and development firm which seeks to employ the beneficiary as a software engineer for a period of four years. The director revoked approval of the visa petition after receipt of information from the United States Consulate General in Vancouver which concluded that the petitioner does not exist.

On appeal, counsel submits a brief. Counsel argues that the petitioner is a bona fide software development firm.

The consular report states the following:

The beneficiary was unable to provide the petitioner's location and address when asked. A telephone call placed to the number provided by the petitioner in the I-129 went to a residential subscriber, not to a business. No telephone listing for the petitioner was found from directory assistance. No existence of the petitioner, a software company, could be found on the Internet. Also, we noted that in the supporting material presented to the INS with the I-129, the petitioner frequently uses the wrong gender to describe the beneficiary. It appears that the petitioning company is not bona fide/does not exist.

On appeal, counsel states that the petitioner does have a telephone number and that the petitioner cannot be held responsible for the inability of directory assistance to assist the consular officer. Counsel argues that the petitioner could not be found by the consular officer because he was working at home when he was called by the Consulate General. The use of the wrong gender is dismissed by counsel as inadvertent error.

Evidence submitted by counsel includes payroll information, articles of incorporation, a lease agreement, page 160 of the Santa Clara White Pages indicating a telephone number for the petitioner, a letter from a firm which does business with the petitioner, and financial statements.

While the Service gives great weight to reports of foreign service officers, the petitioner's evidence and representations strongly suggest that the petitioner does exist. The question of the petitioner's existence is the sole stated ground for revocation.

However, the petitioner appears to be an agent. The record contains no evidence that the petitioner has complied with regulations at 8

C.F.R. 214.2(h)(2)(ii)(F) such as a contract or an itinerary of definite employment. Accordingly, the matter will be remanded to the director for him to address this issue.

**ORDER:** The decision of the director is withdrawn. The matter is remanded to him for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for review.