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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 99 133 50225 Office: Vermont Service Center Date: 31 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)

IN BEHALF OF PETITIONER



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 approved by the Director, Vermont Service Center. Based upon information obtained from the beneficiary during his visa issuance process at the American Embassy, the director determined that the beneficiary was not clearly eligible for the benefit sought. The director served the petitioner with notice of his intent to revoke approval of the visa petition and his reasons therefore, and subsequently revoked the approval of the petition. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is engaged in the marketing and sales of prefabricated buildings. It seeks to employ the beneficiary as a sales engineer for a period of three years. The director determined the petitioner had not established that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, counsel submits a brief.

The director revoked the petition because the officer's report from the U.S. Embassy in Moscow indicates that due to the beneficiary's insufficient knowledge of English, the beneficiary would likely have great difficulty functioning as a sales engineer. On appeal, counsel states that the observations made by the officer in Moscow are conclusory, speculative, equivocal and irrelevant. Counsel asserts that the beneficiary was interviewed in the Russian language by the Consul, who did not ask any questions about his knowledge of or background in English. Counsel states the Consul did not discuss the beneficiary's job duties or his ability to perform them with him. Counsel further states that it is irrelevant whether or not the beneficiary speaks English because the job duties will be performed in Russian.

In a letter dated August 6, 1999, the petitioner's president states that fluency in English is not a prerequisite to perform the job as the job would be conducted in Russian and not in English. He also states that he would work closely with the beneficiary, as the projects would be carried on by both of them and that the beneficiary would be acting as his personal assistant. The president also states that their communication would be entirely in Russian and that the beneficiary already possesses a knowledge of English sufficient to read technical terms.

The duties of the offered position are listed as:

The Petitioner wishes to employ the beneficiary, Mr. Stanislav Taslitskiy, to administer building projects of prefabricated structures to be constructed in the rugged areas of the United States. Using technologies of Russian construction and his practical experiences in building structures in Siberia, Mr. Taslitskiy will apply his

knowledge of design and construction to the prefabricated panel houses on metal frameworks. A key component of these structures for use in the rugged northern areas of the U.S.A. is effective heat insulation and plywood casing. For this he will consult with our clients to determine requirements of new structures or renovations, prepare information for adaptations of the basic designs, plan layouts, and integrate engineering elements into a unified design. In addition, he will organize work in the construction of the modules of the prefabricated structures, direct quality technical control, and conduct periodic on-site observation of work to monitor compliance with plans. He will prepare reports, manuals, and studies for users of our products and use computer-assisted software to modify structures as required. Mr. Taslitskiy will advise on the installation of the prefabricated panels and the coordination of the structure with local land and water conditions.

After the consular officer's report was issued, the petitioner states that a large part of the firm's sales campaign will target Russian immigrants and tourists who would like to own a "dacha" in the United States, and knowledge of Russian is necessary for determining the needs of these customers. However, the record also indicates the firm is actively involved in the construction and sales of prefabricated buildings including private residences, vacation homes, and outbuildings for use in the rugged areas in the northern United States. The record reflects that the firm wishes to develop and market Russian specialized construction technologies for the residential and commercial markets in housing in the northern United States. The record indicates that the petitioner deals with a wider customer base than only Russian immigrants and tourists. Also, in the course of conducting construction projects in the United States, it is unlikely that a sales engineer could avoid interacting with a wide range of English speaking individuals such as inspectors, county officials, suppliers and landowners.

During his interview at the U.S. Embassy, the beneficiary was unable to demonstrate a knowledge of English. The beneficiary would likely have great difficulty functioning as a sales engineer. The record contains no information that overcomes the consular officer's finding that the beneficiary is incapable of performing the proposed duties of the offered position. As such, the petitioner has not established that the beneficiary qualifies to perform services in a specialty occupation. For this reason, the petition may not be approved

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act. 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.