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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-01-192-54153 Office: California Service Center Date: JUL 10 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:  
[Redacted]

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

The petitioner is a bilingual school with 85 employees and a gross annual income of \$4,000,000. It seeks to employ the beneficiary as a librarian for a period of three years. The director determined the petitioner had not submitted the proper fee, nor had it established that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a brief.

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 \$1000 filing fee 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 fee. (It is noted that the petitioner submits a new petition with the additional fee along with the appeal.)

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.

The original 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 original petition was improperly filed, the petitioner's appeal will be rejected.

Furthermore, as the appeal will be rejected, the beneficiary's qualifications need not be examined further in this proceeding.

**ORDER:** The appeal is rejected.