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U.S. Department of Justice

Immigration and Naturalization Service

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

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

[Redacted]

File: WAC-99-122-54390

Office: California Service Center

Date: **061 01 2002**

IN RE: Petitioner:  
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:**

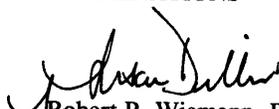
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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, California Service Center. The director subsequently affirmed his decision on motion to reopen. The case is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a firm which provides information system and management consulting services. It has 6 employees and a stated gross annual income of \$275,000. It seeks to employ the beneficiary as a software engineer for a period of three years. The director determined the petitioner had not established that a bona fide employer-employee relationship exists between the petitioner and the beneficiary. The director further noted that the beneficiary would not be working at the location listed on the Form ETA 9035 Labor Condition Application and determined that the petitioner has not complied with the conditions of the labor condition application.

On motion, counsel asserted that the petitioner is a bona fide business capable of paying the beneficiary and that the petitioner and the beneficiary share an employer-employee relationship. Counsel stated that the beneficiary and other computer consultants employed by the petitioner do not work at the address listed on the petition and the labor condition application, but rather in the field at the client sites to which they are assigned. Counsel states the petitioner did file an amended labor condition application once the beneficiary's work assignment was established.

The director affirmed his prior decision reasoning that counsel had not overcome the basis for the denial of the petition.

The director has introduced the concept of "speculative employment" into this proceeding. There is no support for the exploration of this concept per se in either statute or regulations. Similarly, the director has questioned the petitioner's ability to pay the beneficiary's offered wage. Wage determinations and the enforcement of their payment with respect to the H-1B classification are the responsibility of the Department of Labor.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,
2. A statement that it will comply with the terms of the labor condition application for the

duration of the alien's authorized period of stay, and

3. Evidence that the alien qualifies to perform services in the specialty occupation.

The petitioner has provided a certified labor condition application and a statement that it will comply with the terms of the labor condition application. This application shows that the beneficiary would be employed for a three year period at 15150 Via Maravilla in Chino Hills, California. Counsel states, however, that the beneficiary is assigned to work at a specific client job site rather than at the address reflected on the labor condition application.

It is determined that the petitioner has not complied with the terms of the labor condition application because it has not established that the beneficiary would be employed at the 15150 Via Maravilla address should the petition be approved.

The regulations at 8 C.F.R. 214.2(h)(2)(i)(b) require that a petition which requires services to be performed or training to be received in more than one location (as in this case), must include an itinerary with the dates and locations of the services or training. There is no such itinerary in this record. Therefore 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. Accordingly, the decision of the director will not be disturbed.

**ORDER:** The appeal is dismissed.