



DA

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



File: EAC 02 277 53143 Office: VERMONT SERVICE CENTER Date: OCT 09 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:

SELF-REPRESENTED

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, Vermont Service Center, who certified his decision to the Associate Commissioner for Examinations for review. The director's decision will be withdrawn and the petition will be remanded for entry of a new decision.

The petitioner is a non-profit teaching hospital that was established in 1795. It seeks to employ the beneficiary as an intern in the Department of Obstetrics and Gynecology for a period of three years. The director determined that the petitioner had not established that the beneficiary qualified to perform services as an H-1B physician because the beneficiary had not passed the appropriate examinations that are required by the Secretary of Health and Human Services.

8 C.F.R. 103.4(a)(2) states:

Notice to affected party. When a case is certified to a Service officer, the official certifying the case shall notify the affected party using a Notice of Certification (Form I-290C). The affected party may submit a brief to the officer to whom the case is certified within 30 days after service of the notice. If the affected party does not wish to submit a brief, the affected party may waive the 30-day period.

The director certified his decision to the Associate Commissioner for review and forwarded to the petitioner a Notice of Certification (Form I-290C). However, the Notice of Certification does not inform the petitioner that it has 30 days from the date of the certification to submit a brief, or that the 30-day period may be waived upon notice. As the Notice of Certification (Form I-290C) does not comply with the regulation at 8 C.F.R. 103.4(a)(2), the case must be remanded for issuance of a second Notice of Certification that informs the petitioner of its right to either submit a brief or waive the 30-day period.¹

ORDER: The director's decision is withdrawn. The petition is remanded back to the director for issuance of a new Notice of Certification (Form I-290C).

¹ The petitioner requested Premium Processing Service. While Premium Processing Service guarantees the issuance of an approval notice, notice of intent to deny, request for evidence, or notice of an investigation for fraud or misrepresentation within 15 calendar days of receipt of the request (Form I-907), the 15 calendar days do not include the processing of an appeal or notice of certification. See. 66 Fed. Reg. 106, 29682(2001) (to be codified at 8 C.F.R. §§ 103 and 299).