



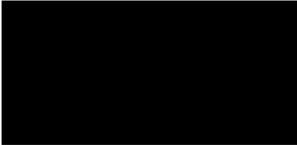
DR

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: LIN-01-213-54683 Office: Nebraska Service Center

Date: OCT 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:



**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, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the matter will be remanded for further consideration and action.

The petitioner is a new business that manufactures and sells wire joining devices and suspension systems. It seeks to employ the beneficiary as its general manager for a period of three years. The director denied the petition because the petitioner had not submitted a Form ETA 9035 Labor Condition Application (LCA) that was certified by the Department of Labor (DOL) prior to the filing date of the petition as required by the regulations.

On appeal, counsel states that the petitioner submitted with the I-129 petition an LCA that was certified by the DOL on June 12, 2001, a date prior to July 5, 2001, the filing date of the petition. Counsel explains that the petition was initially submitted with only the last page of the LCA due to technical difficulties with the new "faxback" system that had just been introduced by the DOL. Counsel further states that copies of the first two pages of the original LCA that were sent to the DOL were also attached to the petition.

Counsel explains that, when the Service questioned the nature of the first two pages of the original LCA in its Request for Evidence dated September 21, 2001, the petitioner obtained a duplicate LCA that was certified by the DOL on October 15, 2001. Counsel argues that the petition was erroneously denied based on a conclusion that the petitioner had not submitted an LCA that was certified by the DOL prior to the filing date of the petition.

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

The record contains a Form ETA 9035 that was certified by the DOL on June 12, 2001. The record contains a second Form ETA 9035 that

was certified by the DOL on October 15, 2001. A careful comparison of these Forms ETA 9035 reveals that the information contained in both LCA's is identical. Both LCA's were signed by an authorized representative of the petitioner's company. There do not appear to be any discrepancies or irregularities in the initial LCA that was certified by the DOL on June 12, 2001. Therefore, it is concluded that the petitioner has overcome the director's objection.

The director has not determined whether the proffered position is a specialty occupation or whether the beneficiary qualifies to perform services in a specialty occupation. Accordingly, the matter will be remanded to the director to make such a determination and to review all relevant issues. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

**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.