



DA

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-01-222-54608

Office: Nebraska Service Center

Date: OCT 10 2002

IN RE: Petitioner:  
Beneficiary:



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:**

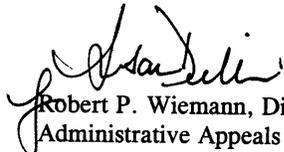
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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 and is now before the Associate Commissioner for Examinations on appeal. The director's decision will be withdrawn and the matter will be remanded for further action and consideration.

The petitioner is a non-profit research organization providing placement services for medical personnel. It seeks to place the beneficiary in the position of a medical technologist aide to be employed by a nursing home for a period of three years. The director determined the petitioner had submitted a labor condition application that was certified on a date subsequent to the filing date of the visa petition.

On appeal, the petitioner's director submits a photocopy of a Labor Condition Application (Form ETA 9035).

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.....

A review of the record reveals that the petitioner responded to a prior Service request for additional evidence in support of the petition by submitting a variety of documents, the vast majority of which do not relate to the specific petition, proffered position, or beneficiary in these proceedings. The director's denial of the petition was based on the fact that the certified labor condition application included in this response was certified on August 27, 2001, a date subsequent to June 27, 2001, the filing date of the visa petition. 8 C.F.R. 214.2(h)(4)(iii)(B)(1). However, upon further examination, it is evident that this particular certified labor condition application is also one of those documents that do not relate to the petition, position, and beneficiary in the current case.

On appeal, the petitioner's director submits a labor condition application that was most recently certified on June 22, 2000, a date prior to June 27, 2001, the filing date of the visa petition.

In addition, the proffered position listed on this certified labor condition application more closely corresponds to the position listed on the I-129 petition than the other labor condition application discussed in the previous paragraph. Therefore, it is determined that the petitioner has overcome the sole basis of denial cited by the director.

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. It must be noted that the certified labor condition application the petitioner submits on appeal does not contain a listing of file numbers for all the previously approved petitions relating to that particular labor condition application, despite containing notations that it had been utilized on behalf of other beneficiaries by the petitioner in the past. Accordingly, the matter will be remanded to the director to make such determinations 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 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.