



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: WAC-01-239-58425 Office: California Service Center

Date: SEP 30 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
Robert P. Wiemann, Director
Administrative Appeals Office

SEP 30 2002 - 11 A 2101

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected.

The petitioner is a rehabilitation center with more than 500 employees and a stated gross annual income in excess of \$500,000. It seeks to employ the beneficiary as a counselor for a period of three years. The director denied the petition because the petitioner had not submitted a certification from the Department of Labor that a Labor Condition Application (Form ETA 9035) had been properly filed and because there was no evidence in the record indicating that the petitioner will comply with the terms of the labor condition application. The director further determined that the record contained no evidence to show that the beneficiary qualifies to perform services in a specialty occupation. The director also denied the petition because the Form I-129 petition was not properly filed in that the petition was signed by the beneficiary rather than by the petitioner.

On appeal, counsel submits a brief and supporting documentation.

Pursuant to 8 C.F.R. 214.2(h)(2)(i), a United States employer seeking to classify a alien as an H-1B temporary employee shall file a petition on Form I-129, Petition for Nonimmigrant Worker.

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.

In this case, the I-129 filed by the petitioner on April 30, 2001, was signed by the beneficiary, not by the petitioner. The director denied the petition, in part, because the petition was not properly signed. This 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 petition was improperly filed, the petitioner's appeal will be rejected. As the appeal will be rejected for the reason cited above, the other grounds for denial of the petition will not be addressed in this decision.

ORDER: The appeal is rejected.