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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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DA

ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
BCIS, AAO, 20 Mass, 3/F  
Washington, D.C. 20536



**AUG 18 2003**

File: EAC-02-092-52109 Office: VERMONT SERVICE CENTER Date:

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)

ON BEHALF OF PETITIONER:



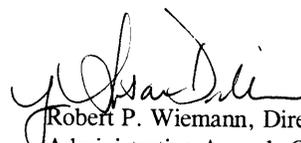
**INSTRUCTIONS:**

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner, a non-profit rehabilitation service for persons with developmental disabilities, has 100 employees. It seeks to employ the beneficiary as a rehabilitation service professional for a period of three years. The director denied the petition because the petitioner had not properly submitted the American Competitiveness and Workforce Improvement Act (ACWIA) fee of \$1,000, nor had it demonstrated eligibility for an exemption of such fee. The director further found that the petitioner had not demonstrated that the proffered position is a specialty occupation.

On appeal, counsel submits additional information.

Pursuant to 8 C.F.R. § 214.2(h)(19)(iii), the following exempt organizations are not required to pay the additional \$500 fee (subsequently raised to \$1,000 by separate legislation):

(A) *An institution of higher education*, as defined in section 101(a) of the Higher Education Act of 1965;

(B) *An affiliated or related nonprofit entity*. A nonprofit entity (including but not limited to hospitals and medical or research institutions) that is connected or associated with an institution of higher education, through shared ownership or control by the same board or federation operated by an institution of higher education, or attached to an institution of higher education as a member, branch, cooperative, or subsidiary;

(C) *A nonprofit research organization or governmental research organization*. A nonprofit research organization is an organization that is primarily engaged in basic research and/or applied research. A governmental research organization is a United States Government entity whose primary mission is the performance or promotion of basic research and/or applied research

. . . .

On appeal, counsel submits evidence that the petitioner is non-profit organization. The petitioner's non-profit organization status is noted. The petitioner, however, has not demonstrated

that it falls within the exempt organizations described above in 8 C.F.R. § 214.2(h)(19)(iii).

Pursuant to 8 C.F.R. § 103.2(a)(7)(i):

[A]n 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. . . .

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.

**ORDER:** The appeal is rejected.