

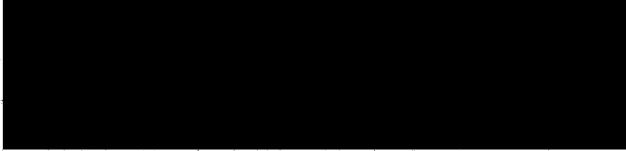


DR

U.S. Department of Justice
Immigration and Naturalization Service

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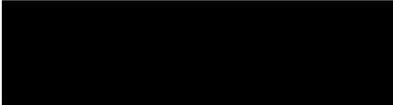
OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: WAC-99-220-51965 Office: California Service Center

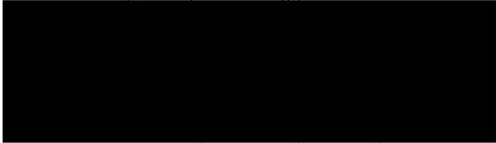
Date: JAN 24 2003

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:



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, California Service Center. The matter was remanded by the Associate Commissioner for Examinations for further consideration and action. The director subsequently denied the petition again and certified his decision to the Associate Commissioner for Examinations for review. The decision of the director will be affirmed.

The petitioner is an architectural services firm with 3 employees and a stated gross annual income of \$150,000. It seeks to employ the beneficiary as an architect for a period of three years. The director initially denied the petition because the petitioner had not submitted sufficient evidence to show that it can pay for the beneficiary's services and, therefore, had failed to show that the beneficiary would be performing services in a specialty occupation.

On appeal, counsel stated that the petitioner needed the professional services of the beneficiary and the beneficiary was qualified to perform services in the specialty occupation of architecture. Counsel argued that the denial of the petition based on the petitioner's presumed inability to pay beneficiary the promised salary was erroneous and had no basis in the statute or the regulations.

The Associate Commissioner for Examinations noted that there is no support for the exploration of the concept of speculative employment in either the statute or the regulations and, therefore, the denial of the petition on that basis could not stand. The Associate Commissioner remanded the matter for a determination as to whether the proffered position was a specialty occupation and the beneficiary was qualified to perform services in a specialty occupation.

On August 28, 2001, the director issued a notice informing the petitioner of his intent to deny the petition and requesting additional evidence to show that the proffered position was a specialty occupation and that the beneficiary was qualified to perform services in a specialty occupation.

Neither counsel nor the petitioner provided any additional evidence in response to the notice. The director, therefore, denied the petition because the petitioner had not shown that the proffered position was a specialty occupation or that the beneficiary was qualified to perform services in a specialty occupation.

8 C.F.R. 103.2(b)(14) states in pertinent part:

Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. . . .

In this case, counsel has failed to submit the requested evidence, initially in response to the notice of intent to deny and again in response to the notice of certification. Therefore, the director correctly denied the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The director's decision dated November 29, 2001, is affirmed.