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Bureau of Citizenship and Immigration Services

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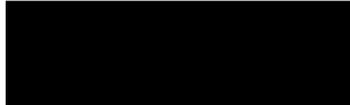
ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, DC 20536



File: WAC 01 040 51382 Office: CALIFORNIA SERVICE CENTER Date:

JUL 02 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)

ON BEHALF OF PETITIONER:



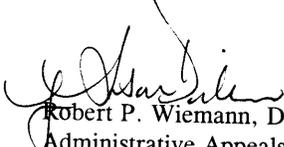
INSTRUCTIONS:

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, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is a California information technology and web development company with five employees and an estimated gross annual income of \$1,000,000 for the year 2000. It seeks to temporarily employ the beneficiary as a programmer analyst for a period of three years. The director determined that the petitioner had not submitted a certified Labor Condition Application (LCA) prior to filing the H-1B petition, and also determined that the petitioner had not established whether it was the employer or agent of the beneficiary.

With regard to appeals procedures, 8 C.F.R. § 103.3(a)(1)(v) states that an officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Although counsel states on the Form I-290B that he is submitting further evidence for the record with regard to the instant petition, no such additional evidence is found in the record. Counsel also states that an LCA was filed prior to the filing of the instant petition and provides no further explanation. This assertion does not appear to identify any erroneous statement of fact by the director. In his request for further evidence, the director requested proof of certification of the initial LCA filed on behalf of the beneficiary. Instead the petitioner submitted another LCA for 15 unidentified analyst programmers that was filed and certified on December 15, 2000 by the Department of Labor. This second LCA was filed after the initial filing of the instant petition. No certification of the initial LCA for the beneficiary is found in the record. Counsel's comment does not appear to address any erroneous conclusion of law or statement of fact by the director in the instant petition.

On appeal, the petitioner fails to identify specifically any erroneous conclusion of law or statement of fact. As the petitioner has provided no additional evidence on appeal to overcome the decision of the director, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

In visa petition proceedings, the burden of proof remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. In accordance with 8 C.F.R. § 103.3(a)(1)(v), the appeal will be summarily dismissed.

ORDER: The appeal is dismissed.