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U.S. Department of Homeland Security
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, D.C. 20536



File: WAC 01 098 50346 Office: CALIFORNIA SERVICE CENTER Date:

JUL 07 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:

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SELF REPRESENTED

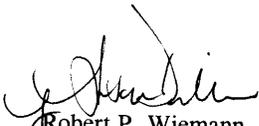
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 which 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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a non-profit California corporation that provides counseling services to minors detained in juvenile detention centers. It has 24 employees and an approximate gross annual income of \$1,000,000. The director determined that the petition should be denied because the petitioner failed to submit, upon request, a Labor Condition Application (ETA Form 9035) and the supplement to Form I-129 for H classification. The supplement form I-129 was submitted to the California Service Center with a motion to reconsider the director's determination. The petitioner however, filed an appeal of the director's decision on March 2, 2002, divesting the service center of jurisdiction to rule on the petitioner's motion to reconsider.

The regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1) provides as follows:

Before filing a petition for H-1B classification in a specialty occupation , the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

The petitioner has failed to submit to the Bureau certification from the Department of Labor that a labor condition application has been filed as required by regulation. The petitioner did submit an "Application For Alien Employment Certification" (ETA Form 750) alleging that this document was in fact the ETA Form 9035 required by regulation. The filing of the ETA Form 750 does not satisfy the regulation, as there has been no certification from the Department of Labor that the labor condition application has been filed. The appeal of petition shall accordingly be dismissed.

ORDER: The appeal is dismissed.