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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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

JUN 19 2003

File: WAC 01 096 53315 Office: CALIFORNIA 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:

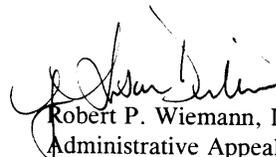
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office 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 Director of the California Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn. The matter shall be remanded to the director for entry of a new decision.

The petitioner is a consulting and software development firm that employs 53 persons and has a gross annual income of \$4,000,000. It seeks to employ the beneficiary as a computer programmer. The director denied the petition because the petitioner failed to provide an itinerary detailing the dates and locations of services to be provided by the beneficiary during the course and scope of his employment.

The regulation at 8 C.F.R. § 214.2(h)(2)(i)(B) provides:

A petition which requires services to be performed or training to be received in more than one location must include an itinerary with the dates and locations of the services or training and must be filed with the Service office which has jurisdiction over I-129H petitions in the area where the petitioner is located. The address which the petitioner specifies as its location on the I-129H petition shall be where the petitioner is located for purposes of this paragraph.

In denying the petition the director found that the beneficiary would only be employed directly by the petitioner when outside assignments were not available. An itinerary was accordingly requested. On appeal however, the petitioner has provided sufficient evidence to establish that the beneficiary will be a full time employee of the petitioner, working under a project manager who directs and controls all aspects of the beneficiary's employment. The beneficiary will only provide services at various client locations on occasion, and for brief periods of time. The vast majority of the beneficiary's work will be performed at the petitioner's business location. Under these circumstances, the regulation noted above is inapplicable and an itinerary is not required. Accordingly the director's decision must be withdrawn.

The director, however, did not address other relevant issues, particularly, whether the proffered position is a specialty occupation. Therefore, this matter is remanded to the director to determine whether the beneficiary will be working in a specialty occupation, and for consideration of any other relevant issues. The director may request any additional evidence deemed necessary to make a determination.

ORDER: The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.