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

PUBLIC COPY

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



File: SRC-02-061-51445 Office: Texas Service Center

Date:

MAR 19 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)

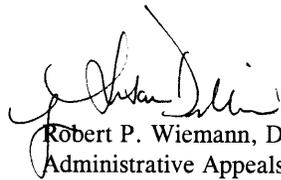
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prevent clearly unwarranted
invasion of personal privacy**

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.


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 matter will be remanded to the director for treatment as a motion.

The petitioner is a healthcare facility with 120 employees and a gross annual income of \$5,994,288. It seeks to employ the beneficiary as a team leader/manager for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

Neither counsel nor the petitioner appealed the director's decision. Instead, the petitioner submitted additional information, which was received by the director on April 30, 2002, 108 days after the denial of the petition on January 11, 2002.

The AAO has jurisdiction to consider an appeal that is filed pursuant to the denial of a petition. 8 C.F.R. § 103.3. The appropriate form to be used for an appeal in this type of petition is the Notice of Appeal (Form I-290B). Instead of filing a Form I-290B, however, the petitioner submitted additional information, which may be considered a motion to reopen and reconsider, pursuant to 8 C.F.R. § 103.5. As no Form I-290B has been filed, the AAO does not have jurisdiction to consider the motion to reopen and reconsider. It is also noted that even if the petitioner had filed a Form I-290B, the appeal would have been filed untimely, and, therefore, pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B), it would have been treated as a motion to reopen as described in 8 C.F.R. § 103.5(a)(2), or a motion to reconsider as described in § 103.5(a)(3).

Accordingly, the record shall be remanded to the director to consider the petitioner's evidence on motion. The director will determine whether the petitioner has met the eligibility requirements under section 101(a)(15)(H) of the Act, and may request any additional evidence deemed necessary to assist her with her determination. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The petition is remanded to the director to consider the motion to reopen and reconsider.