

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

PUBLIC COPY

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



File: LIN 01 230 54361

Office: NEBRASKA SERVICE CENTER

Date:

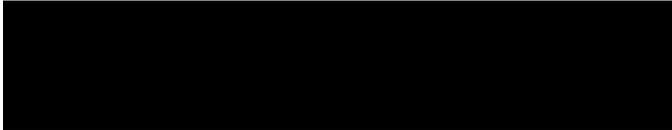
IN RE: Petitioner:
Beneficiary:



NOV 19 2003

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:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 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 Citizenship and Immigration Services (CIS) 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, Nebraska Service Center, who affirmed his decision in a subsequent motion to reopen. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded to the director to determine whether the proffered position qualifies as a specialty occupation.

The petitioner is a medical office with 15 employees, has a gross annual income of \$1,038,981, and wishes to employ the beneficiary as a medical technologist. The director denied the petition on the ground that the beneficiary was a graduate of a foreign medical school coming to the United States to perform duties in the medical profession, and did not satisfy the requirements of 8 C.F.R. § 214.2(h)(4)(viii).

On appeal, counsel submits a brief. Counsel states, in part, that neither the petitioner, nor the beneficiary, are subject to the provisions of 8 C.F.R. § 214.2(h)(4)(viii), as the beneficiary is not coming to the United States to perform the services of a physician.

Counsel is correct in his assertion. The regulation at 8 C.F.R. § 214.2(h)(4)(viii) applies only to physicians coming to the United States to work as physicians, and who will provide direct patient care, or are coming to teach or conduct research at or for a public or nonprofit private educational or research institution or agency. The regulation does not apply to foreign physicians seeking admission to the United States to perform services in some other capacity. As such, the director's decision will be withdrawn and this matter shall be remanded to the director who shall determine whether the proffered position qualifies as a specialty occupation. The director may obtain such evidence as he deems necessary in rendering that opinion.

ORDER: The director's March 22, 2002, decision is withdrawn. The matter is remanded to the director for entry of a new decision consistent with the directives of this opinion.