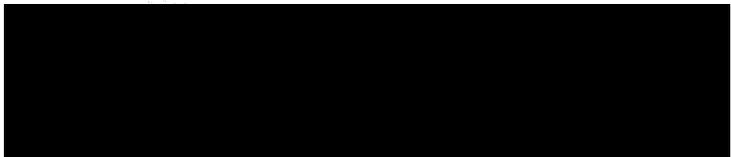


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PUBLIC COPY

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

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536



FILE: LIN-02-157-50696 OFFICE: NEBRASKA SERVICE CENTER DATE:

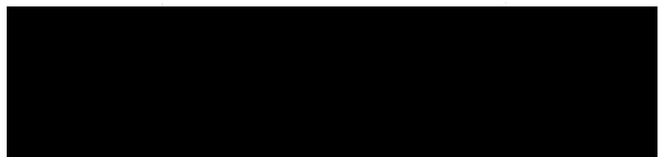
IN RE: Petitioner:
Beneficiary:



NOV 24 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)

IN 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 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 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a pharmaceutical consulting firm that employs 40 persons and has a gross annual income of \$4 million. It seeks to employ the beneficiary as an electrical control engineer. The director denied the petition because the petitioner failed to submit a timely certified labor condition application.

On appeal, the petitioner submits a certified labor condition application, and requests that Citizenship and Immigration Services (CIS) accept the document.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the petitioner filed a timely labor condition application.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to at 8 C.F.R. § 214.2(h)(4)(iii)(B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,
2. A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay,
3. Evidence that the alien qualifies to perform services in the specialty occupation

On July 22, 2002, the director denied the petition, finding that the petitioner failed to provide a certified labor condition application. The director stated that, in response to its request for a certified labor condition application, the petitioner submitted a labor condition application that the Department of

Labor hadn't signed or certified. Thus, in the absence of the requested document, the director denied the petition.

On appeal, the petitioner requests that CIS accept its certified labor condition application. The petitioner states that it inadvertently mailed the wrong document in response to the director's request, and it immediately mailed the corrected copy when it realized its error.

The record in this proceeding contains: (1) a labor condition application that the Department of Labor certified on July 18, 2002, and (2) the I-129 petition that the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), received on April 10, 2002. Regulations at 8 C.F.R. § 214.2(h)(4)(iii)(B)(1) provide that, before filing a petition for H-1B classification, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application. Based on the evidence in this record, this has not occurred; accordingly, the petition shall be denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.