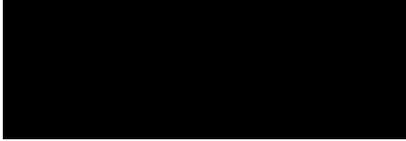


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U.S. Department of Homeland Security
Citizenship and Immigration Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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

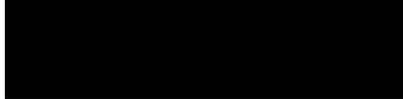


File: WAC-99-152-52034

Office: CALIFORNIA SERVICE CENTER

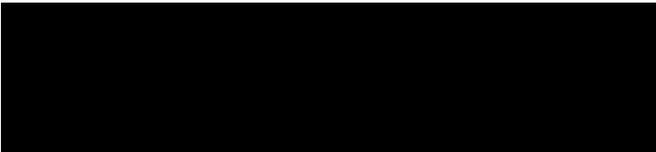
Date **OCT 16 2003**

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:



PUBLIC COPY

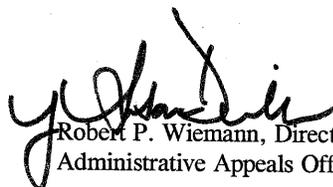
INSTRUCTIONS:

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, California Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). A subsequent motion to reopen and reconsider was granted by the AAO, who affirmed its previous decision. The matter is now before the AAO on a second motion to reopen. The motion will be granted. The previous decisions of the AAO will be affirmed.

The petitioner markets various types of services to Japanese tourists, such as cellular telephone services, tour package services, and lodging rental services. It has seven employees and a gross annual income of \$690,000. It seeks to employ the beneficiary as a market research analyst for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, the petitioner's previous counsel had provided additional information in support of the appeal.

The AAO dismissed the appeal reasoning that the petitioner had not submitted a certified labor condition application. The AAO also found that the beneficiary had no master's degree in any field of study or a degree in either economics or marketing. The AAO further found that the proffered position appeared to combine the duties of a general manager or executive with those of a marketing manager and did not require a baccalaureate degree in a specific specialty.

On first motion, the petitioner's previous counsel submitted a certified labor condition application. She also submitted additional information to demonstrate that the beneficiary was qualified to perform the duties of a specialty occupation, and that the proffered position was that of a market research analyst, a position that qualifies as a specialty occupation.

The AAO affirmed its previous decision reasoning that the proffered position was that of a marketing manager or market research manager rather than a market research analyst and, therefore, did not require a baccalaureate degree in a specific specialty. The AAO further found that the petitioner's labor condition application had not been submitted timely.

On second motion, counsel submits evidence that a new H-1B visa petition was filed for the beneficiary and approved by the director. Counsel also submits copies of the supporting documentation that was submitted with the new petition. Counsel

asserts that the original petition should be approved based on the approval of the new petition.

The petition that was approved on behalf of the beneficiary is noted. It is also noted, however, that the job title and description of duties that are reflected on the approved petition are amended from those that were presented in the original petition. Upon review of the record, neither the petitioner nor counsel has submitted any evidence that would overcome the reason for denial of the original petition.

With respect to counsel's objection to denial of this petition in view of the approval of a second petition that the petitioner filed in the beneficiary's behalf, the AAO is never bound by a decision of a service center or district director. *Louisiana Philharmonic Orchestra v. INS*, 44 F.Supp. 2d 800, 803 (E.D. La. 2000), aff'd, 248 F. 3d 1139 (5th Cir. 2001), cert. denied, 122 S.Ct. 51 (2001).

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. Accordingly, the decision of the director will not be disturbed.

ORDER: The decisions of the AAO dated March 27, 2000 and August 21, 2001, are affirmed.