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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

[Redacted]

File: WAC 01 104 53528 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:

[Redacted]

OCT 23 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:

[Redacted]

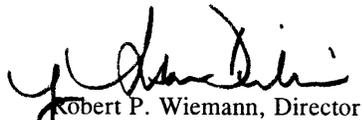
INSTRUCTIONS:

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, California Service Center. A timely appeal was filed by the petitioner. That appeal was then dismissed by the Administrative Appeals Office (AAO). This matter is now before the AAO on petitioner's motion to reconsider pursuant to 8 C.F.R. § 103.5. The motion shall be dismissed. The previous decision of the AAO will be affirmed.

The petitioner is a biotechnology research and product development business with four employees and a projected gross annual income of \$500,000. It seeks to extend its authorization to employ the beneficiary as a research scientist for a period of three years. The director denied the petitioner's I-129 petition on the ground that it failed to obtain a certified labor condition application (LCA) prior to the filing of the petition. The director's decision was appealed to the AAO, which dismissed the appeal for failure to obtain a certified LCA prior to the filing of the I-129 petition.

The regulation at 8 C.F.R. § 103.5(a)(3) provides, in pertinent part, that "a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy." A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5 (a)(4).

The petitioner's motion provides no basis for reconsidering the prior decision. Counsel states simply that the petitioner was unaware that it had to obtain a certified Labor Condition Application (LCA) for an I-129 petition seeking continuation of previously approved employment. The petitioner has failed to demonstrate that the decision was based on an incorrect application of law or service policy, and cites no relevant precedent in that regard as required by applicable regulation. 8 C.F.R. § 103.5 (a)(3).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been sustained and petitioner's motion to reconsider must be dismissed.

ORDER: The motion is dismissed. The previous decision of the AAO, dated June 21, 2002, is affirmed.