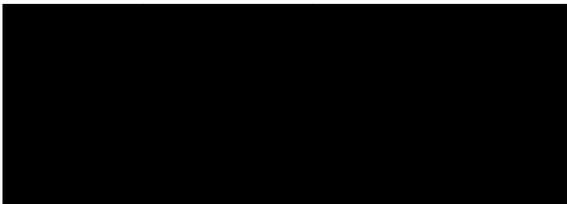




U.S. Citizenship
and Immigration
Services

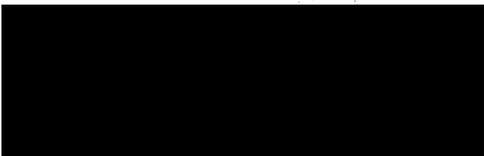


FILE: LIN 03 108 52785 Office: NEBRASKA SERVICE CENTER Date: AUG 31 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner is a software development and consulting business that seeks to employ the beneficiary as a software consultant. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the petitioner had not submitted a timely labor condition application. The director also found that the petitioner had not submitted the proper American Competitiveness and Workforce Improvement Act (ACWIA) fee of \$1,000, nor had it demonstrated eligibility for an exemption of such fee.

On appeal, counsel states, in part, that if the director determines that the petitioner is required to submit the \$1,000 fee, it will immediately do so.

Pursuant to 8 C.F.R. § 214.2(h)(19)(iii), the following exempt organizations are not required to pay the additional \$500 fee (subsequently raised to \$1,000 by separate legislation):

(A) An institution of higher education, as defined in section 101(a) of the Higher Education Act of 1965;

(B) An affiliated or related nonprofit entity. A nonprofit entity (including but not limited to hospitals and medical or research institutions) that is connected or associated with an institution of higher education, through shared ownership or control by the same board or federation operated by an institution of higher education, or attached to an institution of higher education as a member, branch, cooperative, or subsidiary;

(C) A nonprofit research organization or governmental research organization. A nonprofit research organization is an organization that is primarily engaged in basic research and/or applied research. A governmental research organization is a United States Government entity whose primary mission is the performance or promotion of basic research and/or applied research

Pursuant to 8 C.F.R. § 103.2(a)(7)(i):

[A]n application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. Rejected applications and petitions, and ones in which the check or other financial instrument used to pay the filing fee is subsequently returned as nonpayable will not retain a filing date. . . .

As the petitioner is not one of the exempted organizations, this petition should have been rejected by the director as improperly filed. There is no provision for an appeal from an improperly filed petition.

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As the record indicates that the petition was improperly filed, the petitioner's appeal will be rejected.

ORDER: The appeal is rejected.