



U.S. Citizenship
and Immigration
Services

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FILE: LIN 01 257 53480 Office: NEBRASKA SERVICE CENTER Date: SEP 01 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:
[Redacted]

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.

to *Mari Johnson*
Robert P. Wiemann, Director
Administrative Appeals Office

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identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center. The director's decision was then appealed to the Administrative Appeals Office (AAO). That appeal was dismissed by the AAO. The matter is now before the AAO on a motion to reopen and 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 construction company and presently seeks to employ the beneficiary as a project manager. It endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to 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). The director denied the petition on the ground that the beneficiary was not qualified to perform the duties of a specialty occupation. The AAO then dismissed the petitioner's appeal on the same grounds, further holding that the petitioner had not complied with the terms of its Labor Condition Application (LCA) by attempting to change the title and duties of the proffered position on appeal.

The regulation at 8 C.F.R. § 103.5 provides in pertinent part:

[A]ny motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider.

If the adverse decision was served by mail, an additional three-day period is added to the proscribed period. 8 C.F.R. § 103.5a(b). Counsel seeks to reopen and reconsider the decision of the AAO that was issued on November 7, 2002. The motion to reopen and reconsider was filed on December 12, 2002, and would have been timely if received by Citizenship and Immigration Services (CIS) on or before December 10, 2002. The motion is, therefore, not timely. The motion must accordingly be dismissed pursuant to 8 C.F.R. § 103.5(a)(4).

ORDER: The motion is dismissed. The previous decision of the AAO dated November 7, 2002 is affirmed.