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U.S. Department of Justice

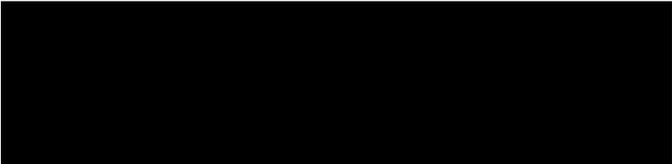
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

Date:

05 DEC 2001

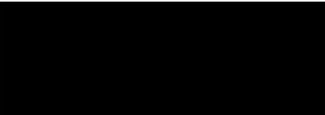
Public Copy



File: EAC 01 015 51937

Office: VERMONT SERVICE CENTER

IN RE: Petitioner:  
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(ii)(b)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

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 which 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 the Service 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a pharmaceutical development company with 150 employees and an approximate gross annual income of \$17,000,000. It seeks to employ the beneficiaries as data analysts for a period of three months. The director determined that the petitioner had not established that the offered positions were temporary in nature and that the petitioner had not submitted the required labor certification.

On appeal, the petitioner submits a brief in which he provides a description of the proposed duties of the beneficiaries.

The regulation at 8 C.F.R. 214.2(h)(6)(i) defines an H-2B nonagricultural temporary worker as:

an alien who is coming temporarily to the United States to perform temporary services or labor, is not displacing United States workers capable of performing such services or labor, and whose employment is not adversely affecting the wages and conditions of United States workers.

Further, the regulation at 8 C.F.R. 214.2(h)(6)(iv)(A) provides that an H-2B petition for temporary employment in the United States shall be accompanied by a labor certification issued by the United States Department of Labor or a notice detailing the reasons why such certification cannot be made.

The director denied the petition finding that the petitioner had failed to submit the required certification or notice that such certification could not be issued. The director also determined that the petitioner had failed to establish that the positions were temporary in nature.

On appeal, the petitioner provides an additional description of the proposed duties of the positions and argues that the positions are temporary. However, the petitioner did not submit the required labor certification or notice that such certification could not be made.

In view of the fact that the petitioner has not submitted the required labor certification or evidence that the certificate could not be made, the petition may not be approved. Further, in the absence of such information, a determination cannot be made as to whether the offered positions are temporary in nature. Therefore, the director's decision is affirmed.

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 appeal is dismissed.