



U.S. Department of Justice

Immigration and Naturalization Service

Public Copy

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



File: SRC 01 016 50259 Office: Texas Service Center

Date: 11 DEC 2001

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

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:  
[Redacted]

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, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was approved by the Director, Texas Service Center, who certified the decision to the Associate Commissioner for Examinations for review. The decision of the director will be affirmed.

The petitioner is a photography firm which seeks to employ the beneficiary as a media lab assistant manager for a period of eleven months. The certifying officer of the Department of Labor (DOL) declined to issue a temporary labor certification because he determined that the petitioner had not established a temporary need.

8 C.F.R. 214.2(h)(6)(iv)(A) requires that a petition for temporary employment in the United States be accompanied by a temporary labor certification from the Department of Labor, or notice detailing the reasons why such certification cannot be made. 8 C.F.R. 214.2(h)(6)(iv)(E) states that a petition not accompanied by a temporary labor certification must be accompanied by countervailing evidence from the petitioner that addresses the reasons why the Secretary of Labor could not grant a labor certification.

In response, counsel argues that the need for the occupation is temporary. Counsel has provided evidence that the petitioner has tested the labor market. Counsel has also established that the petitioner has a peakload need for the beneficiary's services.

The director determined that the petitioner had established that it seeks the beneficiary's services for a temporary period only and that the policies of the DOL had been observed.

After review of the evidence contained in the record, the decision of the director is found to be correct. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 361. The petitioner sustained that burden. Accordingly, the decision of the director will be affirmed.

**ORDER:** The decision of the director is affirmed. The visa petition is approved.