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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

[Redacted]

JUL 20 2001
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File: SRC 01 015 51922 Office: Texas Service Center Date:

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

Petition: Petition for 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

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.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: This is a motion to reconsider the Associate Commissioner for Examination's decision dismissing the appeal of the denial of the nonimmigrant visa petition. The motion to reconsider will be granted and the previous decision affirmed.

The petitioner is a recording studio and video production company. It desires to employ the beneficiaries as musicians for a period of one and one-half months. The petition was not accompanied by the required Labor Certification, ETA 750. The director determined that absent the certification, the petitioner failed to meet the regulatory requirements necessary for approval of the petition. The director's decision was affirmed by the Associate Commissioner on appeal.

On motion, the petitioner states that the original certification got lost in the mail and that he will try to obtain a copy to send to the Service. A certified copy of the labor certification was not submitted with the motion.

The regulation at 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.

The petition was filed on October 18, 2000 without a temporary labor certification, or notice detailing the reasons why such certification cannot be made. No certification has been submitted with the motion. Absent such certification from the Department of Labor or notice detailing the reasons why such certification cannot be made, the petition cannot be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden. Accordingly, the previous decisions of the director and the Associate Commissioner will be affirmed.

ORDER: The order of January 29, 2001 dismissing the appeal will be affirmed. The petition is denied.