

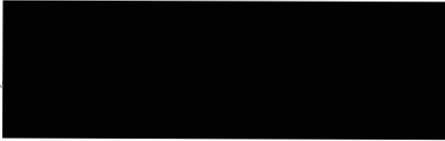


U.S. Department of Justice

Immigration and Naturalization Service

Public Copy

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



D4

JUL 20 2001

File: EAC 00 132 50352 Office: Vermont Service Center

Date:

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

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.

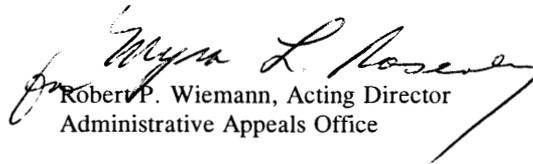
If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent 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, 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 engages in apicultural services. It desires to employ the beneficiary as a queen breeder and production manager for a period of nine months. The Department of Labor issued a temporary labor certification. The director determined that the petitioner had not established that the beneficiary qualified for the position. The director's decision was affirmed by the Associate Commissioner on appeal.

The Associate Commissioner also decided on appeal that the petitioner had not shown that the need for the services to be performed by the beneficiary are temporary. Further, the petitioner has not established that it has a training program in place by which it recruited or hired trainees, employed a full-time instructor and simultaneously operated a training program and a commercial or other enterprise. Matter of Golden Dragon Chinese Restaurant, 19 I&N Dec. 238 (Comm. 1984).

On motion, the petitioner states that the letter dated June 27, 2000 by the beneficiary's co-worker does not refer specifically to *apis carnica* (Russian) bees. The petitioner also states that the nature of his need is temporary because the nature of the industry is seasonal. The petitioner asserts that it is the only apiculture business in the state of Maryland that has an apprenticeship-training program in place and is ready and able to train and maintain apprentices when suitable assistance can be found.

The regulations at 8 CFR 103.5(a)(3) states:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The petitioner states on the Application for Alien Employment Certification (Form ETA 750) that "familiarization with *Apis Carnica* (Russian) strain of bees is essential". The letter contained in the record of proceeding as evidence of the beneficiary's experience does not indicate the beneficiary has any experience with this strain of bees. Therefore, the petitioner has not demonstrated that the beneficiary is qualified for the position.

The petitioner has not submitted any additional evidence to show that the need for the beneficiary's services is temporary. Form ETA 750 does not describe the duties to be performed as seasonal. Form ETA 750 also indicates that the beneficiary will be assisting in the training. The record indicates that the petitioner has made a voluntary commitment to train apprentices on-the-job, however, the record does not contain a copy of the petitioner's training program.

Upon review, the petitioner has not stated the reasons and cited any pertinent precedent decisions to establish the decision was based on an incorrect application of law or Service policy.

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 February 18, 2001 dismissing the appeal is affirmed. The petition is denied.