



U.S. Department of Justice

Immigration and Naturalization Service

04

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

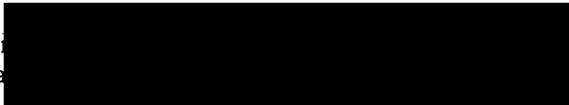


Public Copy

JUL 24 2001

File: EAC 00 010 50826 Office: Vermont Service Center Date:

IN RE: Petitioner
Beneficiary



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

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
for Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner engages in the manufacture of cheese. It desires to employ the beneficiary as a cheesemaker for an indefinite period. The petition was not accompanied by the required Application for Alien Employment Certification (Form 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 also determined that the petitioner had not established that the services or labor to be performed are temporary. Finally, the director determined that the petitioner had not established that the beneficiary qualified for the position.

On appeal, the petitioner states that since it is a small company, the beneficiary should be allowed to work with them since she is an expert at making cheese.

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 25, 1999 without a temporary labor certification, or notice detailing the reasons why such certification cannot be made. 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 minimum education, training and experience on Form ETA 750 reads eight years of grade school education and 40 years of experience in the job being offered, or 36 years of experience in a related occupation, specifically, farming, milking and cheese making. The petitioner has not submitted any evidence to show that the beneficiary has the experience listed on the certification. Evidence could be a letter from her former employer, and if unavailable, two or more affidavits sworn to, or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. The petitioner does not indicate in its letter that it has direct personal knowledge of the beneficiary's work history. Absent such evidence, the petitioner has not shown that the beneficiary has the experience stipulated on Form ETA 750.

The petition indicates that the proposed duties are making Georgian and Russian type cheeses. The petition also indicates that the dates of intended employment are from October 18, 1999 until open.

Since the petitioner engages in cheese manufacturing, the petitioner's need for someone to provide these services will always exist. The petitioner has not established that the need for the services to be performed is temporary.

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.

ORDER: The appeal is dismissed.