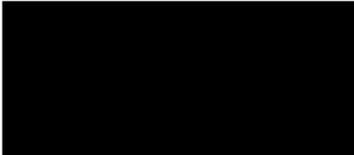




U.S. Department of Justice  
Immigration and Naturalization Service

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



Public Copy

File: SRC 00 112 53389 Office: Texas Service Center

Date:

OCT 30 2001

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, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied 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 withdrawn and the matter remanded to him for further action and consideration.

The petitioner is a poultry processor which seeks to employ the beneficiaries as poultry eviscerators for a period of nine 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.

The substantive issues of this proceeding will not be addressed at this time. The petition was considered pursuant to section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(ii)(a). The occupation of chicken eviscerator is not an agricultural occupation, per se. Therefore, the petition should have been considered pursuant to section 101(a)(15)(H)(ii)(b) of the Act, 8 U.S.C. 1101(a)(15)(H)(ii)(b). The matter is remanded to the director for such consideration.

**ORDER:** The decision of the director is withdrawn. The matter is remanded to him for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for review.