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Immigration and Naturalization Service

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



08 JUL 2002

File: SRC 99 267 51334 Office: Texas Service Center Date:

IN RE: Petitioner: [Redacted]  
Beneficiaries: [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)

Public Copy

IN BEHALF OF PETITIONER: [Redacted]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 that 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 W. Wiemann, Director  
Administrative Appeals Office

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

The petitioner engages in the business of shipbuilding. It desires to employ the beneficiaries as "first class shipfitters" for a period of nine 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 also determined that the petitioner's need for the beneficiaries' services is permanent.

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 September 13, 1999 without a temporary labor certification, or notice detailing the reasons why such certification cannot be made. Absent such certification or notice from the Department of Labor detailing the reasons why such certification cannot be made, the petition cannot be approved.

In addition, the petitioner has not overcome the director's finding that the jobs offered are permanent rather than temporary in nature. As the petitioner failed to meet the threshold requirements for filing a petition of this kind, this issue need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.