



U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted
to prevent clearly unwarranted
investigation of persons

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



DS

File: LIN 00 013 50424 Office: Nebraska Service Center Date: 28 AUG 2002

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

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(iii)

IN BEHALF OF PETITIONER: Self-represented

Public Copy

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 P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center. The decision was appealed to the Associate Commissioner for Examinations. Upon review, the decision of the director was withdrawn, and the case remanded to the director for further action and consideration. The director's decision has now been certified to the Associate Commissioner for Examinations for review. The petition shall be denied.

The petitioner is a restaurant. It seeks classification of the beneficiary as a chef trainee for a period of one year. The director determined that the petitioner's training program deals in generalities with no fixed schedule, objectives or means of evaluation. The director also determined that the petitioner has not demonstrated that the proposed training is not available in the beneficiary's own country. Finally, the director determined that the beneficiary already possessed substantial training and expertise in the proposed field of training.

On appeal, the Associate Commissioner found that the petitioner submitted sufficient evidence to overcome the director's objections. However, beyond the decision of the director, the Associate Commissioner found that the petitioner had not set forth the proportion of time that would be devoted to observation and instructional training. The Associate Commissioner also found that the petitioner had not shown that the beneficiary would not be engaged in productive employment beyond that necessary and incidental to the training. Further, the Associate Commissioner determined that the petitioner had not demonstrated that the beneficiary would not be placed in a position that is in the normal operation of the business and in which citizens and resident workers are regularly employed.

Since these deficiencies were not reflected in the director's decision, the case was remanded to the director to afford the petitioner an opportunity to submit additional evidence. The director reopened the case and allowed the petitioner 30 days to submit additional evidence. The petitioner did not respond.

The regulations at 8 C.F.R. 103.2(b)(13) states in pertinent part:

Effect of failure to respond to a request for evidence or appearance. If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied.

The record as it is presently constituted does not contain any evidence that addresses the concerns of the Associate Commissioner. Consequently, the petition shall be considered abandoned.

ORDER: The petition is denied.