

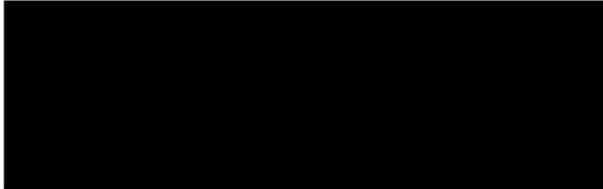
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



D2

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUN 01 2010

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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 you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the visa petition that is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for further consideration and action.

The petitioner is a meat packaging company. It seeks to employ the beneficiary temporarily in the United States as a sales representative. The director denied the petition because the numerical limitation on H-1B filings during the fiscal year had been reached and the petitioner was not exempt from the numerical limitations.

On appeal, counsel did not seek approval of the underlying petition, but observed that, pursuant to 8 C.F.R. § 214.2(h)(8)(ii)(D), the petitioner's filing fee should have been returned.¹

The regulation at 8 C.F.R. § 214.2(h)(8)(ii)(D) states, in pertinent part:

If the total numbers available [to H-1B petitioners] in a fiscal year are used, new petitions and the accompanying fee shall be rejected and returned with a notice that numbers are unavailable for the particular nonimmigrant classification until the beginning of the next fiscal year.

The numerical limitation on H-1B filings for the 2008 fiscal year was reached on April 1, 2008. The instant petition was filed subsequently, but within the same fiscal year, on September 8, 2008. In it, the petitioner did not claim to be exempt from the numerical limitation. The pertinent regulation suggests that the petition should have been rejected and the petitioner's filing fee should have been returned with it. The AAO notes that the director did not address this issue. The matter will be remanded for consideration of this issue.

ORDER: The director's decision is withdrawn. The matter is remanded for further consideration and action and entry of a new decision.

¹ Actually, the petitioner's president mistakenly referenced 8 C.F.R. § 214.2(h)(8)(ii)(E), rather than 8 C.F.R. § 214.2(h)(8)(ii)(D).