



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



File: EAC 98 261 53302 Office: Vermont Service Center Date: AUG 4 2000

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)

Public Copy

IN BEHALF OF PETITIONER [Redacted]

Identifying data removed 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

*Terrance M. O'Reilly*

Terrance M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the director. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reopen and reconsider. The motion will be granted and the previous decisions of the director and the Associate Commissioner will be affirmed.

The petitioner is an information technology and consulting firm employing two persons. It seeks to employ the beneficiary as a programmer for a three-year period. The director determined the petitioner had not established that it is a viable concern or that it intends to employ the beneficiary or has sufficient work at the appropriate level to employ the beneficiary. The Associate Commissioner found that the petitioner had not responded specifically to the grounds stated for denial.

On motion, counsel states that the petitioner believes that the appeal was denied without review of the additional evidence that was submitted upon appeal. Counsel submits a filing certification from the State of New Jersey showing that [REDACTED] is also known by the alternate name of [REDACTED]. Counsel also submits a U.S. Corporation, Income Tax Return for 1998 establishing that [REDACTED] and [REDACTED] are the same firm and that the company was doing business in [REDACTED] New Jersey during that year as a two-person firm.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,
2. A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay, and
3. Evidence that the alien qualifies to perform services in the specialty occupation.

The petitioner has provided a certified labor condition application and a statement that it will comply with the terms of the labor condition application. This application shows that the beneficiary would be employed for a three year period in [REDACTED] [REDACTED]. The record also shows that the beneficiary would be working at [REDACTED], in [REDACTED] New Jersey for the entire time.

Review of the record shows no conclusive evidence that the beneficiary would be employed on a consultant basis with any

company other than the petitioner. Additionally, the record does not establish that the petitioner would be able to provide the beneficiary with sufficient work to perform for the firm at its location in [REDACTED] nor that the petitioner has offices in all four of the New Jersey counties listed.

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 order of July 22, 1999 dismissing the appeal is affirmed.