

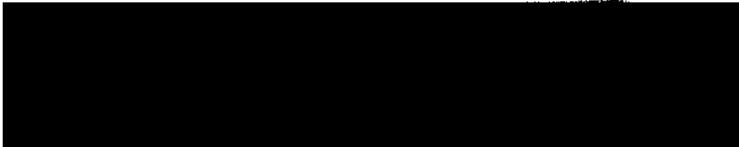


U.S. Department of Justice

Immigration and Naturalization Service



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



Public 030

File: SRC 99 249 54424 Office: Texas Service Center

Date: JAN 21 2000

IN RE: Petitioner:  
Beneficiary:



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)

Identify  
prevent clearly  
invasion of personal privacy

IN BEHALF OF PETITIONER: Self-represented

INSTRUCTIONS:

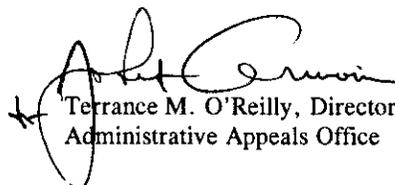
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Texas Service Center, and certified to the Associate Commissioner for Examinations for review. The director's decision will be affirmed and the petition will be denied.

The petitioner is in the business of operating a full-service resort and conference center facilities. It desires to continue the employment of the beneficiary as a waitperson for a period of 23 days. The director determined that absent a new certification valid for the dates requested, the petitioner did not establish eligibility for an extension of stay. The director certified his decision to the Associate Commissioner for Examinations for review.

The regulations at 214.2(h)(15)(ii)(C) states that:

an extension of stay for the beneficiary of an H-2A or H-2B petition may be authorized for the validity of the labor certification or for a period of one year....

A copy of the ETA 750 indicates a validity period from April 1, 1999 until November 30, 1999. The petitioner is presently requesting an extension beyond the time period indicated on the certification. Absent a new labor certification for the dates requested, the petition cannot be approved.

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

**ORDER:** The director's decision will be affirmed. The petition is denied.