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U.S. Department of Justice

Immigration and Naturalization Service

identification data deleted to prevent clearly unwarranted invasion of personal privacy.

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

[redacted]

File: EAC 00 233 50215 Office: VERMONT SERVICE CENTER Date: 11 MAR 2002

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)

IN BEHALF OF PETITIONER:

[redacted]

Public Copy

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

Helen E. Crawford for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner on appeal. The appeal will be sustained.

The petitioner is a telecommunications research and design company. It seeks to employ the beneficiary permanently in the United States as a software engineer. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary had the requisite experience as of the petition's filing date.

On appeal, counsel submits additional evidence.

The issue to be considered in this proceeding is whether the beneficiary has all the training, education, and experience specified on the labor certification as of the petition's filing date. Matter of Wing's Tea House, supra. Here, the petition's filing date is October 4, 1999.

The Application for Alien Employment Certification (Form ETA 750) indicated that in order to perform the duties of the position, the beneficiary must possess three years of experience in the job offered or three years of experience in the related occupation of software developer.

The director determined that the petitioner had not shown that the beneficiary possessed the requisite experience in the job offered.

On appeal, counsel submits an employment letter from Dinesh Subramoni, which affirms that the beneficiary had the requisite experience as a senior software engineer.

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 sustained that burden.

ORDER: The appeal is sustained.