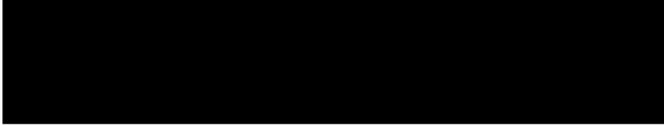




U.S. Department of Justice  
Immigration and Naturalization Service

D4

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



JAN 25 2001

File: WAC 99 156 52928 Office: California Service Center Date:

IN RE: Petitioner:  
Beneficiary:



Petition: Petition for a 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)

IN BEHALF OF PETITIONER: Self-represented

**PUBLIC COPY**

identification data deleted 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

Mar C. Mulrean, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a German restaurant. It desires to employ the beneficiary as a traditional festivity coordinator, organizer and partial hostess. The petition was not accompanied by the required Labor Certification, ETA-750. The director denied the petition because the petitioner had not submitted the required certification or the Department of Labor's notice that such certification cannot be made. The director also denied the petition because the petitioner had not established that the services or labor to be performed are temporary.

On appeal, the petitioner states that it is very difficult to find qualified personnel for an ethnic restaurant. The petitioner requests that the previous decision be reconsidered.

The regulation at 8 C.F.R. 214.2(h)(6)(iv)(A) requires that a petition for temporary employment in the United States be accompanied by a temporary labor certification from the Department of Labor, or notice detailing the reasons why such certification cannot be made.

The petition was filed on May 28, 1999 without a temporary labor certification, or notice detailing the reasons why such certification cannot be made. Absent such certification from the Department of Labor or notice detailing the reasons why such certification cannot be made, the petition cannot be approved.

The petition indicates that the proposed duties are planning an authentic menu, coordinating food composition in the kitchen, promoting German cultural events, organizing and decorating for festivities, managing the restaurant, hosting guests, and maintaining German authenticity in terms of staff service, ambiance and quality. The petitioner also states that the beneficiary wants to become a financial partner in his business if she could obtain a visa allowing her to work. The proposed duties indicate that the petitioner's need for someone to provide these services will always exist. The petitioner has not established that the need for the services to be performed is temporary.

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 appeal is dismissed.