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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street NW
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

JUN 12 2003

File: LIN 03 049 51733 Office: Nebraska Service Center Date:

IN RE: Petitioner: [redacted]
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)

ON BEHALF OF PETITIONER: [redacted]

INSTRUCTIONS:
This is the decision 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: This is a motion to reconsider the Administrative Appeals Office's (AAO) decision dismissing the appeal of the denial of the nonimmigrant visa petition. The motion to reconsider will be dismissed.

The record indicates that the petitioner acts as the United States agent for the foreign employer, [redacted] Japan. The petitioner desires the beneficiary to act as its buyer representative for their foreign employer, [redacted] in the United States, for a period of four and one-half months. No United States salary will be paid to the beneficiary, as he will remain an employee of [redacted] Japan while in the United States. The certifying officer of the Department of Labor (DOL) declined to issue a labor certification because the petitioner had not established that the job was open to United States workers or that the petitioning employer was responsible for the wages. The director determined that the petitioner had established that sufficient countervailing evidence had been submitted to establish that qualified persons in the United States were not available, that no United States workers will be displaced, and that the positions are temporary. The AAO withdrew the director's decision on appeal.

The regulation at 8 C.F.R. § 103.5(a)(3) states that a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Bureau policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. According to 8 C.F.R. § 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed.

On motion, counsel states that the two issues raised by the AAO are a need for countervailing evidence and a need to show that the job is not permanent. Counsel goes on to state that the AAO's request for countervailing evidence is provided in the attached guidelines, which show that the job is not an appropriate one for regular labor certification process.

The attached guidelines, *Decisions on the H-2B Processing Guidelines for the Seafood Industry, The Seafood Industry Workgroup* (June 1994), do not address the concerns stated in the Department of Labor's Final Determination notice for this specific case.

Counsel asserts that the H-2B category is the appropriate visa for a buyer's representative, and the job is clearly temporary because it depends on seasonal fishing seasons. However, the assertions that counsel make do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Inasmuch as the motion is not supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Bureau policy, the motion will be dismissed in accordance with 8 C.F.R. § 103.5(a)(4).

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 motion is dismissed.