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U.S. Citizenship
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Services

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FILE: WAC 04 217 52998 Office: CALIFORNIA SERVICE CENTER Date: AUG 16 2005

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)

ON BEHALF OF PETITIONER:
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is a shoe and apparel retailer that seeks to employ the beneficiary as a sales manager. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the basis that the proposed position was not a specialty occupation.

On December 6, 2004, counsel submitted Form I-290B (Notice of Appeal) without a brief or evidence. Although counsel marked the box at section two of the Form I-290B to indicate that a brief and/or evidence would be sent within 30 days, the AAO has received neither. The AAO sent a follow-up letter to counsel's office requesting that the brief and/or additional evidence be sent within five days and has received no response. Thus, the AAO deems the record complete and ready for adjudication.

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

At section three of the Form I-290B counsel has inserted several paragraphs from his response to the director's request for additional evidence (RFE). The appeal, therefore, consists of nothing more than resubmitted material from the earlier RFE response. In resubmitting material already contained in the record, neither counsel nor the petitioner present additional evidence on appeal to overcome the decision of the director, and the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

Finally, the AAO notes that the instant petition was received at the service center on August 2, 2004, several days after the expiration of the beneficiary's previous nonimmigrant status on July 21, 2004. Also, the AAO has looked beyond the record of proceeding and it appears as though the beneficiary was employed, without H-1B approval, by the petitioner in 2003.¹ However, the AAO will not address either issue, as issues relating to an individual's lawful maintenance of nonimmigrant status are beyond the scope of the AAO's jurisdiction.

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 appeal is dismissed. The petition is denied.

¹ On the petitioner's Quarterly Wage and Withholding Reports from the second, third, and fourth quarters of 2003, the beneficiary is named as having received wages from the petitioner.