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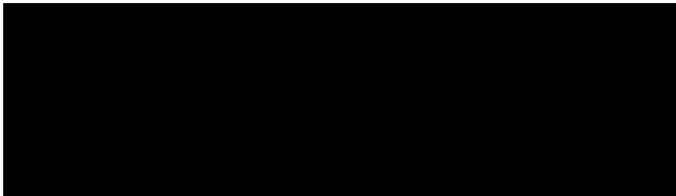
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FILE: WAC 03 182 54212 Office: CALIFORNIA SERVICE CENTER Date: AUG 16 2005

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:



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 an IT consulting and software development company. It seeks to employ the beneficiary as a research and development engineer, and endeavors to classify him 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).

As stated in 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. By decision dated January 31, 2004, the director determined that the petitioner had failed to establish that it was a functioning business and had immediate work available for the beneficiary to perform upon his arrival in the United States. As such, the petition was denied. The petitioner then filed a motion to reconsider. On April 7, 2004, the director dismissed the petitioner's motion noting that the motion did not establish new facts, that it was not supported by affidavits or other documentary evidence, and that it did not establish that the director's decision was incorrect based on the evidence of record at the time of the initial decision.

On appeal, the petitioner indicated on the Form I-290B that a brief would be filed within 30 days supporting the appeal. To date, no brief has been filed and the record is deemed complete. The petitioner did not identify any erroneous conclusion of law or statement of fact upon which the appeal from the director's denial of its motion to reconsider was based. The appellant must do more than simply file an appeal. It must clearly demonstrate the basis for the appeal. This, the appellant has failed to do. As such, the appeal must be dismissed.

The burden of proof in this proceeding 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.