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U.S. Citizenship
and Immigration
Services

DI



APR 26 2007

FILE: LIN 04 149 50768 Office: NEBRASKA SERVICE CENTER

Date:

IN RE: Petitioner:
Beneficiary:



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:

SELF - REPRESENTED

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, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter was appealed to the Administrative Appeals Office (AAO). The AAO dismissed the appeal as untimely after a duplicate copy of an I-290B was filed on March 7, 2005. Subsequent to the dismissal, it was discovered that the petitioner had filed an I-290B with the Nebraska Service Center on February 7, 2005. The appeal was, therefore, timely and the AAO reopened the matter on February 20, 2007 pursuant to 8 C.F.R. § 103.5(a)(5)(ii) for the purpose of entering a new decision. The petitioner was notified of the reopening and given an opportunity to submit a brief within 30 days of the notice of reopening. To date, no brief has been filed. The appeal will be summarily dismissed.

The petitioner operates restaurants and a retail store. It seeks to employ the beneficiary as a retail store and restaurant manager and endeavors to classify her 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. The director determined that the proffered position was not a specialty occupation. Accordingly, the petition was denied.

On appeal, the petitioner states that it has opened a new restaurant and needs to expand its staff, noting that it had been unable to fill its manpower needs. The petitioner further indicated that it would submit a brief and/or additional evidence to the AAO within 30 days. On March 5, 2005, the petitioner submitted copies of advertisements indicating it was attempting to fill its assistant manager opening. The petitioner further indicated that it had made other attempts to find suitable personnel. The petitioner has not, however, specifically identified any erroneous conclusion of law or statement of fact upon which the appeal is based. The appellant must do more than simply ask for 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.