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U.S. Citizenship
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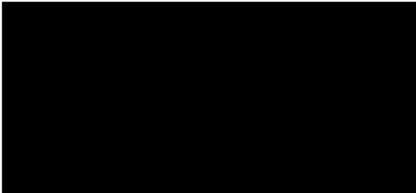


FILE: EAC 06 149 54156 Office: VERMONT SERVICE CENTER Date: OCT 05 2007

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.

Michael T. Kelly
/s/ Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO). The appeal will be summarily dismissed.

The petitioner distributes beauty supplies, employs five personnel, and claims a gross annual income of \$300,000 and a net annual income of \$60,000. It seeks to employ the beneficiary as a sales engineer or sales and marketing manager. Accordingly the petitioner endeavors to classify the beneficiary as a nonimmigrant 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).

On November 3, 2006, the director denied the petition determining that the record did not establish that the proffered position is a specialty occupation.

On December 4, 2006, the Texas Service Center received a Form I-290B, Notice of Appeal, indicating that a brief and/or additional evidence would be submitted to the AAO within 30 days. Careful review of the record reveals no subsequent submission of a brief or evidence; all of the petitioner's documentation in the record predates the issuance of the notice of decision. Accordingly, the record is considered complete.

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).

Counsel's statement on the Form I-290B reads:

The Director's decision is in error. The Director has incorrectly interpreted the facts of this case and has incorrectly applied the facts of this case to the applicable law. The job position herein is a Specialty Occupation. The job position does require a minimum college degree i.e. Bachelor's Degree or Equivalent. The petitioner herein requires the prospective employee for this job position to have a minimum Bachelor's Degree.

Counsel's assertion on appeal is insufficient as a basis for the appeal. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel fails to specify how the director's decision included an erroneous conclusion of law or statement of fact when denying the petition. Counsel does not address any of the director's findings or determinations regarding the evidence submitted. As neither the petitioner nor counsel presents additional evidence or argument on appeal sufficient to overcome the decision of the director, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

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 summarily dismissed. The petition is denied.