

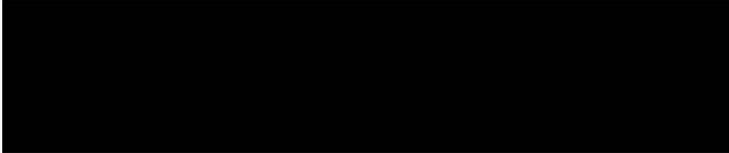
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**U.S. Citizenship
and Immigration
Services**

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FILE: WAC 04 084 50363 Office: CALIFORNIA SERVICE CENTER Date: JUN 03 2008

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)



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.

for *Michael T. Kelly*
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director revoked approval of the nonimmigrant visa petition and the Administrative Appeals Office (AAO) remanded a subsequent appeal to the director for entry of a new decision. The director has denied the petition and certified her decision to the AAO for review. The director's decision will be affirmed. The petition will be denied.

The petitioner is a film and television production company with four employees and estimated gross annual income of \$1.5 million that seeks to employ the beneficiary as an executive producer. 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 record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation, received at the service center on February 2, 2004; (2) the director's April 11, 2005 notice of intent to revoke approval of the petition; (3) the petitioner's May 12, 2005 response to the director's notice; (4) the director's May 25, 2005 denial letter; (5) the Form I-290B and supporting documentation, received on June 10, 2005; (6) the petitioner's June 9, 2005 appellate brief and supporting documentation; (7) the AAO's January 8, 2007 remand of the petition to the director; (8) the director's April 3, 2007 request for additional evidence; and (9) the director's April 11, 2008 notice of certification. The AAO reviewed the record in its entirety before issuing its decision.

In its January 8, 2007 decision, the AAO determined that, although the petitioner meets the regulatory definition of a United States employer, it had not established the existence of a specialty occupation. Accordingly, the AAO remanded the matter to the director for his determination of whether a specialty occupation exists for the beneficiary to fill, with certification to the AAO should her decision be adverse to the petitioner.

In her April 3, 2007 request for additional evidence, the director afforded the petitioner 84 days to submit evidence regarding the existence of a specialty occupation. However, the petitioner did not respond. Accordingly, the director denied the petition and certified her decision to the AAO for review. The contents of these documents are part of the record and their contents need not be repeated here.

As the petitioner chose not to respond to the director's request for additional evidence or submit evidence to the AAO to rebut the findings of the director's notice of certification, it has not demonstrated the existence of a position that may be classified as a specialty occupation under any of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the director's decision will be affirmed.

For reasons related in the preceding discussion, the petitioner has failed to establish that the proposed position qualifies for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO will not disturb the director's denial of the petition.

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 director's April 11, 2008 decision is affirmed. The petition is denied.