

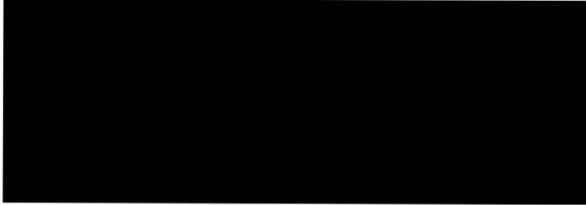
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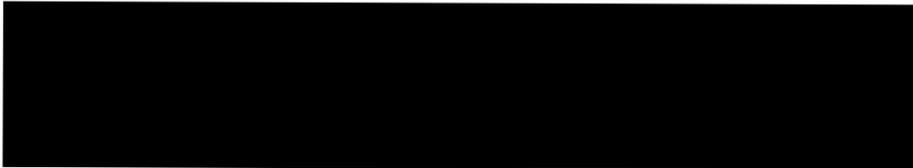
FILE: WAC 07 068 50963 Office: CALIFORNIA SERVICE CENTER Date: **MAR 03 2008**

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:



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 Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the AAO. The appeal will be summarily dismissed.

The petitioner provides computer solutions services. It seeks to employ the beneficiary as a programmer analyst (software engineer). 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 July 12, 2007, the director denied the petition, determining that the petitioner failed to establish that it had a programmer analyst position, thus a specialty occupation position, available for the beneficiary when the petition was filed. The director also noted that the petitioner indicated on the Labor Condition Application (LCA) that the beneficiary would be working in Pleasant Hill and Seattle, Washington, but that the contract in the record showed the beneficiary would be working in San Jose, California.

The record of proceeding before the AAO contains: (1) the Form I-129 filed January 8, 2007 with supporting documentation; (2) the director's March 27, 2007 request for further evidence (RFE); (3) counsel's June 15, 2007 response to the director's RFE and supporting documentation; (4) the director's July 12, 2007 denial letter; and (5) the Form I-290B, Notice of Appeal, date stamped as received by the California Service Center on July 27, 2007. Although the Form I-290B indicates 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.

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: "Further information and documentation will be submitted in 30 days." Counsel's July 26, 2007 letter appended to the Form I-290B also indicates that further evidence and documentation will be submitted to the AAO in 30 days.

Neither counsel nor the petitioner has submitted any further documentary evidence or argument sufficient to overcome the director's decision in this matter. Counsel does not address the director's findings or determinations regarding the record of evidence as submitted in support of this petition. Counsel fails to specify how the director's decision included an erroneous conclusion of law or statement fact when denying the petition. 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 appeal will be summarily dismissed. The petition will be denied.

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.