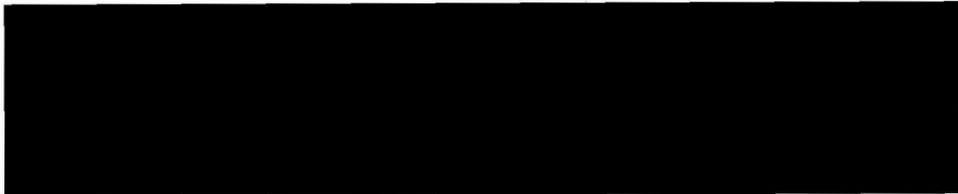


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FILE: WAC 07 262 50470 Office: CALIFORNIA SERVICE CENTER Date: **NOV 05 2008**

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)

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 a software development and consulting firm. It seeks to employ the beneficiary as a programmer analyst, 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. The director denied the petition stating that: the petitioner is not a United States employer; the petitioner did not submit a valid Labor Condition Application (LCA) in support of the Form I-129; and the proffered position does not qualify as a specialty occupation. Accordingly, the petition was denied.

On appeal, the petitioner indicated on the Form I-290B that a brief would be filed within 30 days supporting the appeal. The Form I-290B was filed on March 26, 2008. As of September 22, 2008, no brief had been filed. The AAO then contacted counsel for the petitioner requesting a copy of any brief filed within 30 days of the filing of the Form I-290B. On September 23, 2008, subsequent to the AAO's request, counsel submitted a brief dated September 23, 2008, along with additional information. The brief and information submitted on or about September 23, 2008 will not be considered as the brief was filed outside the 30-day period permitted for the filing of such documentation. Counsel did not explain why the brief was submitted late or otherwise provide good cause for granting an extension beyond thirty days. Pursuant to 8 C.F.R. § 103.3(a)(2)(vii), any request for additional time to submit a brief may be denied, as a matter of discretion, for failure to show good cause. The petitioner submitted no timely additional information in support of the appeal. The petitioner did not timely address the basis of the director's denial or specifically identify any erroneous conclusion of law or statement of fact upon which the appeal would be 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.