

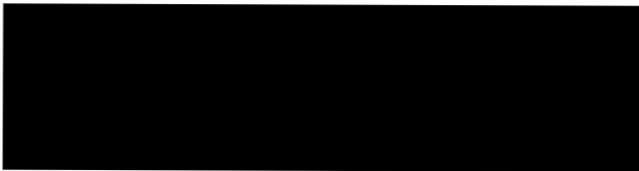
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FILE: WAC 07 081 52824 Office: CALIFORNIA SERVICE CENTER Date: NOV 05 2008

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 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 describes its business as “computer specialists” on the Form I-129. It seeks to employ the beneficiary as a database/applications systems engineering specialist, 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 failed to establish that the beneficiary had pending a labor certification which would entitle him to extend his period of authorized stay in this country beyond the six-year period permitted by section 214(g)(4) of the Immigration and Nationality Act (8 U.S.C. § 1184(g)(4)).

On appeal, the petitioner indicated on the Form I-290B that additional documentation supporting the appeal would be filed within 30 days. To date, no brief or additional evidence has been filed and the record is deemed complete. The petitioner contends that a labor certification filed on behalf of the beneficiary by a former employer (A I M Management Group, Inc.) on May 30, 2003 had not been denied by the Department of Labor, and the petition should be approved for an additional year. The director’s decision denying the petition stated that the labor certification case filed on behalf of the beneficiary by A I M Management Group, Inc. (AIM) had been closed by the Department of Labor administratively due to the former employer’s failure to respond to a 45-day Center Receipt Notice Letter (CRNL). The director states that the petitioner has not demonstrated entitlement to an additional year of H-1B status because the petitioner has not established that a valid labor certification is presently pending on behalf of the beneficiary. The petitioner did not address the basis of the director’s denial, and did not specifically identify 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.