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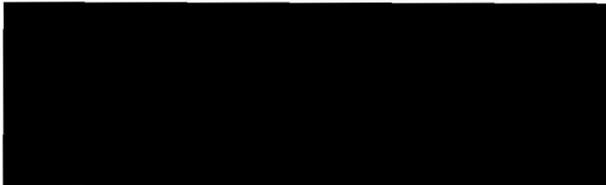
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FILE: WAC 07 146 53673 Office: CALIFORNIA SERVICE CENTER Date: OCT 15 2008

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

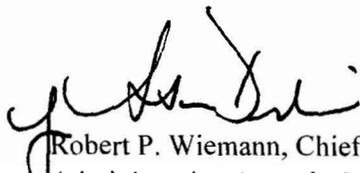
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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, Chief
Administrative Appeals Office

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

The petitioner provides information technology services. It seeks to employ the beneficiary as a 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 August 31, 2007, the director denied the petition, determining that the petitioner failed to establish: that it enjoyed an employer-employee relationship with the beneficiary; and that the proffered position is a specialty occupation position. The director also found that the petitioner's statements to Citizenship and Immigration Services (CIS) had been contradicted by evidence showing that it had not complied with the terms of employment in place for its previous H-1B beneficiaries.

The record of proceeding before the AAO contains: (1) the Form I-129 filed April 2, 2007 with supporting documentation; (2) the director's May 17, 2007 request for further evidence (RFE); (3) counsel's August 7, 2007 response to the director's RFE and supporting documentation; (4) the director's August 31, 2007 denial decision; and (5) the Form I-290B, Notice of Appeal, date stamped as received by the California Service Center on September 28, 2007. Although the Form I-290B is checked to indicate 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. On September 16, 2008, the AAO sent a facsimile to the attorney of record requesting a copy of the brief and/or additional evidence, if such had been previously submitted, be sent to the AAO within five business days. No response has been received.

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: "Our brief statement and evidence to establish that the petitioner meets all three requirements of 8 C.F.R. [§] 214.2(h)(4)(ii) and the position meets as [sic] least one of the criteria to qualify as a specialty occupation as stated in 8 C.F.R. [§] 214.2(h)(4)(iii) will be sent to AAO within 30 days as provided by the instruction to Form I-290B."

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.

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ORDER: The appeal is summarily dismissed. The petition is denied.