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U.S. Department of Homeland Security  
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Washington, DC 20529



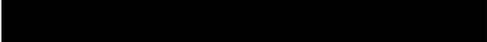
U.S. Citizenship  
and Immigration  
Services

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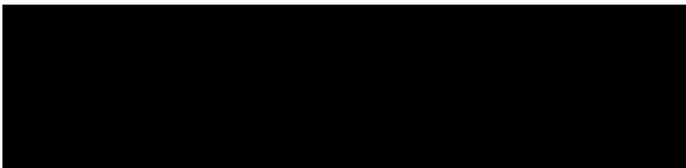


FILE: WAC 08 018 51464 Office: CALIFORNIA SERVICE CENTER Date: **OCT 15 2008**

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 Administrative Appeals Office (AAO). The appeal will be summarily dismissed. The petition will be denied.

The petitioner is a farm labor contractor. It seeks to extend the employment of the beneficiary as an agriculture supervisor. 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 May 9, 2008, the director denied the petition, determining that the petitioner failed to establish that it had filed and received a certified Department of Labor Form ETA 9035E, Labor Condition Application (LCA) prior to filing the petition on October 24, 2007.

The record of proceeding before the AAO contains: (1) the Form I-129 filed October 24, 2007 with supporting documentation; (2) the director's January 16, 2008 request for further evidence (RFE); (3) the petitioner's April 1, 2008 response to the director's RFE, including an LCA certified on March 27, 2008; (4) the director's May 9, 2008 denial decision; and (5) the Form I-290B, Notice of Appeal, date stamped as received by the California Service Center on June 6, 2008. 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 revealed no subsequent submission of a brief or evidence.

The petitioner's statement on the Form I-290B reads: "Pursuant to 8 C.F.R. [§] 103.5(3), we are requesting the SERVICE to reconsider or re-open this petition based on an error that we consider as a vital factor in the case's approval. Our brief and supporting documentary evidence will follow." The petitioner also included a one-page, two paragraph letter dated June 5, 2008 asserting that the Notice of Appeal was timely filed. The last sentence of the one-page letter states in bold: "OUR BRIEF WILL FOLLOW."

On September 22, 2008, the AAO sent a facsimile to the petitioner 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. In response, the petitioner's new counsel submitted a September 25, 2008 letter asserting that the petitioner had timely filed a brief. Counsel attached the claimed timely-filed brief as Exhibit 2. Upon review of Exhibit 2, the AAO does not find that this document was submitted timely. The document submitted as Exhibit 2 is dated June 5, 2008 and includes the same two paragraphs as the June 5, 2008 letter attached to the Notice of Appeal, except that the words "OUR BRIEF WILL FOLLOW" have been deleted, and the petitioner has added assertions and claims to the letter. The September 25, 2008 letter from counsel also references a proof of mailing as Exhibit 3. Upon review of Exhibit 3, the AAO finds that the proof of mailing is a photocopy of the original postal service address label received by the California Service Center June 6, 2008, that contained the Notice of Appeal and the one-page June 5, 2008 letter. Thus, the information submitted by counsel not only does not establish that a brief was timely submitted, but also is evidence that the "brief" was created after the AAO requested that any previously submitted brief be submitted again. The information submitted by counsel on September 25, 2008, including counsel's letter and the exhibits was not timely submitted and will not be further reviewed.

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).

The petitioner has not submitted any further documentary evidence or argument sufficient to overcome the director's decision in this matter. The petitioner does not address the director's findings or determinations regarding the record of evidence as submitted in support of this petition. The petitioner fails to specify how the director's decision included an erroneous conclusion of law or statement fact when denying the petition. As the petitioner does not present 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.