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U.S. Department of Homeland Security
Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536



File: SRC-02-069-50678

Office: TEXAS SERVICE CENTER

Date:

DEC 30 2003

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: SELF-REPRESENTED

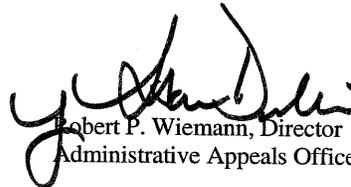
INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the Texas Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal shall be dismissed.

The petitioner sells and installs floor covering. It employs five persons and has an approximate gross annual income of \$150,000. It seeks to employ the beneficiary as a floor-covering technician. The director determined the petitioner had not established that the proffered position is a specialty occupation or that the beneficiary is qualified to perform the duties of a specialty occupation.

The petitioner's owner submitted a timely Form I-290B on July 23, 2002 and indicated that he should have filed for H-2B classification for the beneficiary rather than H-1B. He submits a photocopy of the original Form I-129 Supplement H that was filed on behalf of the beneficiary, with the "H-2B Nonagricultural worker" box highlighted.

The petitioner's desire to change the beneficiary's classification to an H-2B is noted. The record, however, contains no evidence that an amended labor condition application was filed pursuant to 8 C.F.R. 214.2(h)(2)(i)(E). It is also noted that the file contains no evidence that an amended petition with fee was filed along with the new labor condition application.

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).

On the Form I-290B, the petitioner fails to specify how the director made any erroneous conclusion of law or statement of fact in denying the petition. As the petitioner does not present additional evidence on appeal 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 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.