



U.S. Citizenship
and Immigration
Services

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FILE: SRC 02 228 51568 Office: TEXAS SERVICE CENTER Date: APR 26 2004

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

PUBLIC COPY

SELF-REPRESENTED

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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.

[Handwritten signature: Mari Johnson]
for 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 shall be dismissed.

The petitioner is engaged in the sale, design, installation, repair, and delivery of office furniture. It seeks to employ the beneficiary to perform delivery, installation, and repairs. The petitioner endeavors to classify the beneficiary 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).

The director denied the petition because the proffered position is not a specialty occupation and the beneficiary is not qualified to perform a specialty occupation. The director also found that the petitioner had not submitted a Form I-129 Supplement H, a certified labor condition application, or proof of the beneficiary's valid nonimmigrant status.

On appeal, the petitioner states that it is petitioning to classify the beneficiary as an "EB-3" worker.

The petitioner's statement is noted. Citizenship and Immigration Services (CIS) regulations, however, affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(12). A petitioner cannot materially change a position's title or its associated job responsibilities after the filing of the petition. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, as have occurred here, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. As such, for the purposes of this proceeding, the proffered position is that of an H-1B delivery, installation, and repair worker.

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.