



U.S. Citizenship  
and Immigration  
Services

*DW*



FILE: WAC 02 028 52659 Office: CALIFORNIA SERVICE CENTER Date: AUG 16 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:

SELF-REPRESENTED

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*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal shall be summarily dismissed.

The petitioner is a winery and vineyard that seeks to employ the beneficiary as a chef. The petitioner, therefore, 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 determined that the proffered position was not a specialty occupation.

The record indicates that the director issued the decision on July 16, 2002. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. Although the petitioner dated the appeal August 20, 2002, it was received by CIS on August 27, 2002, or 42 days after the decision was made. However, on appeal, the petitioner submitted the envelope received with the director's decision that established the service center mailed the decision to the petitioner on August 2, 2002. This mailing date provided the petitioner with only two weeks to submit an appeal. Therefore, for purposes of this proceeding, and based on service error, the appeal is considered timely.

On its Form I-290B, the petitioner indicated that it needed 30 additional days to submit a brief and/or evidence to the AAO.<sup>1</sup> As of this date, however, the AAO has not received any additional evidence into the record. Therefore, the record is complete.

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 states that it needs additional time to obtain information for the record; however, the petitioner does not 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.

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<sup>1</sup> The individual who assisted the petitioner does not appear to be an attorney. In addition, Immigration Unlimited, Inc., is not found in the roster of accredited representatives recognized by the Department of Justice, Executive Office for Immigration Review, to represent individuals before the Department of Homeland Security, the Immigration Courts, or the Board of Immigration Appeals (BIA). See <http://www.usdoj.gov/eoir/statspub/raroster.htm>. Therefore, the petition is considered to be self-represented. See 8 C.F.R. § 103.2(a)(3).