

identifying data deleted to
prevent identity of warrant recipient
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

DEC 14 2004

FILE: WAC 03 196 53947 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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, 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 will be summarily dismissed.

The petitioner is a culinary academy. In order to employ the beneficiary as a student services officer, 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, 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition on the basis that the petitioner had failed to establish that the proffered position meets the definition of a specialty occupation as set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On October 21, 2003, counsel submitted a Form I-290B (Notice of Appeal) with a cover letter with attached copies of the director's request for additional evidence (RFE), counsel's letter of reply to the RFE, and the twelve documentary exhibits that counsel had submitted as attachments to her RFE reply letter.

Counsel entered a check mark at the box at section 2 of the Form I-290B that indicates that the Form I-129 and the aforementioned accompanying documents constitute the appeal. Counsel's narrative at section 3 of the Form I-290B asserts one basis for the appeal, namely, that it is apparent that the director had not reviewed the RFE material, which, counsel claims, adequately addressed the issues cited in the director's decision denying the appeal.

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 appeal here consists of generalized assertions that the director must not have considered the RFE reply documents, because those documents obviously establish that the proffered position is a specialty occupation. Counsel is basically resubmitting the RFE material for the AAO's consideration. In doing so, however, she fails to specify how the director made any erroneous conclusion of law or statement of fact in denying the petition. As neither the petitioner nor counsel presents 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.