

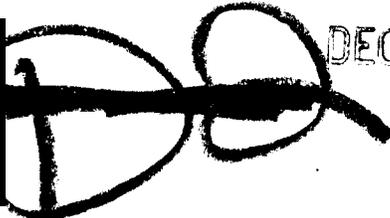
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**U.S. Citizenship
and Immigration
Services**



DEC 14 2008

FILE: EAC 02 172 50880 Office: VERMONT 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:

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, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition, and it affirmed that decision after entertaining a late appeal as a motion to reopen or reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal of the decision on the motion. The appeal will be summarily dismissed.

The petitioner is a personnel placement, computer consulting, and software development firm. 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). On the Form I-129 and the related labor condition application (LCA), the petitioner identified the proffered position as "medical transcriptionist," and, accordingly, the visa petition has been adjudicated for that position. However, on appeal of the director's decision on the motion, the petitioner asserts that the petition should be granted for a materially different position, that of a cytogenetic technologist. On appeal, the petitioner also requests a revision of the June 20, 2002 to June 20, 2005 employment period stated in the LCA, in order to employ the beneficiary through August 31, 2006.

The matters submitted on appeal have no relevance to the grounds upon which the director decided the motion that affirmed its denial of the petition.

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 fails to specify how the director made any erroneous conclusion of law or statement of fact in denying the petition. As the petitioner presents no 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 petitioner may not use the appeal process to amend its petition. Citizenship and Immigration Services regulations do not provide for amendment of a petition once it has been filed. In order to petition for the beneficiary to be employed as a cytogenetic technologist - a materially different position than the medical transcriptionist position for which the present petition was filed - the petitioner would have to file a new petition, with fee and a newly certified LCA with the proper employment dates, to reflect any material changes in the employment or the alien's eligibility that was specified in the original petition. *See* 8 C.F.R. 214.2(h)(2)(i)(E).

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.