U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

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U.S. Citizenship and Immigration Services

[redacted]

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FILE: EAC 03 012 52760 Office: VERMONT SERVICE CENTER Date: MAY 06 2004

IN RE: Petitioner: [redacted]
Beneficiary:

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)(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.

Marie 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 will be summarily dismissed.

The petitioner is an architecture firm. In order to employ the beneficiary, the petitioner endeavors to classify her 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 Form I-129 identified the position as project architect. On appeal, the petitioner attempts, unsuccessfully, to change the position title and associated duties.

On appeal, the petitioner submits a Form I-290B which contains this annotation:

> I am submitting clarification from the position that I am offering [the beneficiary]. I unwittingly described her position as "draftsman" where in fact she will be performing the duties of a "project manager" overseeing draftsmen, coordinating consultants and effectively running jobs under my supervision. For that we are requiring at least a Bachelor ['s degree] in Architecture.

Accompanying the Form I-290B are two letters from the petitioner that, in part, indicate that, in the interim after the director's denial, "[W]e had an additional meeting with [the beneficiary] where we mutually re-negotiated the prospective position, title, and responsibilities within the company." The letters also materially change and expand the duties that were described for the beneficiary prior to the director's decision.

Citizenship and Immigration Services (CIS) regulations constrain the AAO from considering these matters submitted on appeal, because they do not relate to the position that is the subject of the petition before the AAO for adjudication.

CIS regulations 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 may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). Also, a visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

Accordingly, the purpose of a request for evidence is to clarify the facts behind the information in the petition as it was filed. *See* 8 C.F.R. § 103.2(b)(8). Likewise, an appeal from a director's denial of a non-immigrant visa petition is not an opportunity to alter the position that was the subject of the petition when it was filed. Rather, the appeal is only a vehicle for asserting factual or legal errors in the director's decision. *See* 8 C.F.R. § 103.3(a)(1)(v). At neither of these stages can a petitioner change the title or the duties of the position that is the subject of the adjudication. To establish a specialty occupation, the petitioner's efforts must remain fixed on the particular position offered to the beneficiary when the petition was filed. *See Matter of Michelin Tire Corp., supra.* If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

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 presents no matters on appeal other than those related to its attempt to alter the proffered position. Those matters do not specify any erroneous conclusion of law or statement of fact in the director's

denial of the petition, and, as discussed above, the petitioner may not use the appeal process to alter the petition being adjudicated.

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).

If the petitioner wishes to use the newly described position and associated duties as a basis for a non-immigrant visa petition, it must file a new petition with the appropriate fee and certified labor condition application.

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.