



U.S. Citizenship
and Immigration
Services

02



FILE: EAC 03 235 56053 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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 convenience store/gas station. In order to employ the beneficiary as a buyer, 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 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 December 22, 2003, counsel submitted a Form I-290B (Notice of Appeal) without a brief or evidence. Although counsel entered a check mark at the box at section 2 of the Form I-290B which indicates that counsel needed 45 days to submit a brief and/or evidence, the AAO has received neither. Accordingly, the AAO deems the record complete and ready for adjudication.

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, counsel presents only the following general and conclusory statement about the basis of the appeal:

The [Vermont Service Center] failed to consider all the evidence the petitioner submitted in support of its H-1B application. Specifically, the [the Service Center] did not address in its decision the letters petitioner submitted from similar business[es] attesting to the fact that the degree requirement is common to their industry in parallel positions. That the evidence in addition to the additional evidence petitioner submitted established that the position of buyer is indeed a "specialty occupation" pursuant [sic] to 8 C.F.R. § 214.2(h)(4)(iii)(A) and [the Act's] section 101(a)(15)(H)(i)(b).

The cover letter and the formal request for additional time that accompanied the Form I-290B do not discuss the basis of the appeal.

Counsel 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.