



U.S. Citizenship
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FILE: WAC 04 119 50322 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
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)(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 the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is a healthcare facility for the mentally disabled. In order to employ the beneficiary as a logistician, 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 September 22, 2004, the attorney who was then serving as the petitioner's counsel submitted a Form I-290B (Notice of Appeal) without a brief or evidence. Although the attorney entered a check mark at the box at section 2 of the Form I-290B that indicates that he would send a brief and/or evidence within 90 days, the AAO has received neither. By facsimile message on August 11, 2005 replying to an AAO facsimile message that notified him of a 5-day period in which to submit a brief or evidence, the aforementioned attorney stated: "[The petitioner] has retained new counsel." 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).

The only information about the basis of the appeal is this statement at section 3 of the Form I-290B:

The denial is based on an incorrect interpretation of specialty occupation and how it applies to the position in question. The beneficiary meets and exceeds the requirements for qualification. The Government statement that the beneficiary will not be performing the tasks stated, but instead will be doing other work is speculation and not grounded in fact.

This statement fails to specify how the director made any erroneous conclusion of law or statement of fact in denying the petition. As no additional evidence is presented 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.