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U.S. Citizenship
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FILE: EAC 04 012 54271 Office: VERMONT SERVICE CENTER Date: DEC 01 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker 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 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.

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 construction company. It seeks to employ the beneficiary as an architect/CADD operator/draftsman, and endeavors to classify him 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).

As stated in 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. The director determined that the proffered position was not a specialty occupation, and that the petitioner had failed to submit with the petition a certified Labor Condition Application (LCA) as required by regulation. Accordingly, the petition was denied.

On appeal, the petitioner submits a brief and additional information stating that the proffered position qualifies as a specialty occupation. The petitioner did not, however, address that portion of the director's decision denying the petition for failure to submit a certified LCA. The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(B)(1) provides that the petitioner shall submit with an H-1B petition "a certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary." The regulations further provide:

Before filing a petition for H-1B classification in a specialty occupation the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

8 C.F.R. § 214.2(h)(4)(i)(B)(1).

The petitioner did not specifically identify any erroneous conclusion of law or statement of fact upon which the appeal is based, with regard to that portion of the director's decision denying the petition for failing to submit a certified LCA. The appellant must do more than simply ask for an appeal and state that the decision appealed from is incorrect. It must clearly demonstrate the basis for the appeal. This, the appellant has failed to do with regard to one of the independent reasons cited by the director for denying the petition. As such, the appeal must be dismissed.

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.