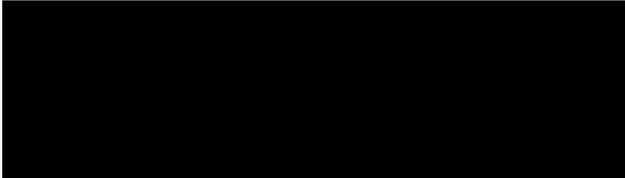




U.S. Citizenship
and Immigration
Services

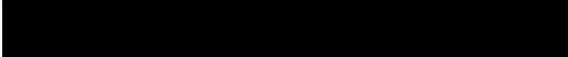
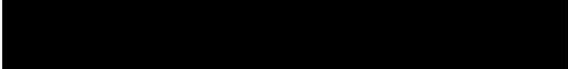
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FILE: WAC 03 253 51203 Office: CALIFORNIA SERVICE CENTER Date: **DEC 05 2005**

IN RE: Petitioner: 
Beneficiary: 

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.



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 operates as a computer consultant contactor and seeks to extend the employment of the beneficiary as a computer software engineer. 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 proffered position did not meet the definition of a specialty occupation. The director noted that the record indicated that the petitioner would utilize the beneficiary when work becomes available. The director found that the evidence submitted by the petition was not credible and was insufficient to establish that the petitioner has been, and will be actually employing the beneficiary in the described position.

The petitioner submitted a timely Form I-290B on July 21, 2004 and indicated that a brief and/or additional evidence was submitted with the Form I-290B. As of this date, the AAO has not received any additional evidence into the record. Therefore, the record is complete.

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, the petitioner fails to specify how the director made any erroneous conclusion of law or statement of fact in denying the petition. The petitioner provided a statement indicating that due to the bankruptcy of some of their clients they “have delayed few months pay to some of the employees.” The petitioner asserts that “eventually we have paid everything [the employees] are supposed to get according to [their] worked [sic] hours for our company.” The petitioner asserts that it has paid the beneficiary. The petitioner states “the beneficiary has also got paid full for last 12 months \$65,000.00. There is delay in payments in his account, but we paid whatever we stated in I-129 petition.” The petitioner submitted two letters addressed to Continental Commercial Group-CA regarding the petitioner’s lawsuit against a client as evidence of nonpayment by its clients. The petitioner failed to address the director's finding that it would not employ the beneficiary in a specialty occupation. As the petitioner fails to 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).

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.