

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

D2

FILE: SRC 04 024 52373 Office: TEXAS SERVICE CENTER Date: DEC 16 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:

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 subsequently accepted the motion to reopen. The service center director ordered that the denial of the petition stand. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner indicates that it provides medical and health care services and seeks to employ the beneficiary as a nurse supervisor. 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 job description of the proffered position provided by counsel consisted of a page from the Department of Labor's *Dictionary of Occupational Titles* with the nurse supervisor positions highlighted. The director granted the motion to reopen/reconsider and concluded that the submitted evidence of an opinion letter was not sufficient to overcome the denial and found that the proffered position did not qualify as a specialty occupation and failed to meet any of the criteria of pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A).

On the Form I-290B counsel requests that the information submitted on motion before the director and the record be considered as the appeal and brief in this matter. Counsel submitted a timely Form I-290B on March 23, 2004 indicating that he would submit a brief and/or evidence to the AAO within 30 days. As of this date, however, 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, counsel fails to specify how the director made any erroneous conclusion of law or statement of fact in denying the petition. Counsel refers to the letter that was previously submitted to the director on motion to reopen. Counsel had stated in the motion to reopen that the author of the letter evaluated the duties of the proffered position and concluded the job offered was a nurse manager. On appeal, counsel fails to address the director's finding that the petitioner failed to establish that the proffered position was a specialty occupation. 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.