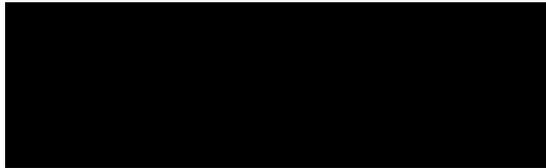




U.S. Citizenship
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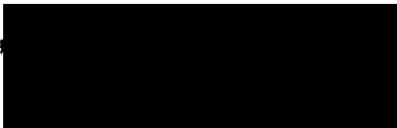
FILE: EAC 03 229 53835 Office: VERMONT SERVICE CENTER Date: JUN 16 2005

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

The petitioner is a wholesaler of electronic, electro-mechanical and mechanical components, systems, and other products related to electronics manufacturing and the defense sector. It seeks to employ the beneficiary as a sales engineer, 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 did not qualify as a specialty occupation. Accordingly, the petition was denied.

The petitioner then filed a motion to reopen dated September 19, 2003, which was submitted with its Form I-290B (Notice of Appeal). The director declined to treat the September 19, 2003 document as a motion and forwarded the matter to the AAO. The only documentation supporting the appeal is counsel's statement that: the petitioner is expanding its business and concentrating on a ". . . different construction equipment sector . . ."; there is no regulation prohibiting moderate sized companies from employing H-1B employees; the beneficiary's salary would be increased after a three-month probationary period; and the position of "sales engineer" is a specialty occupation. The petitioner did not, however, specifically identify any erroneous conclusion of law or statement of fact upon which the appeal is based, with reference to the director's decision that the position offered failed to qualify as a specialty occupation. The appellant must do more than simply ask for an appeal. It must clearly demonstrate the basis for the appeal. This, the appellant has failed to do. 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.