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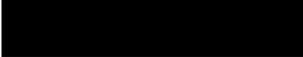
**U.S. Citizenship
and Immigration
Services**

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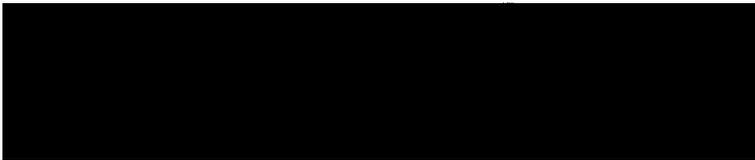


FILE: SRC 03 230 50112 Office: TEXAS SERVICE CENTER Date: NOV 02 2005

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition, and the Administrative Appeals Office (AAO) rejected a subsequent appeal as untimely filed. The matter is again before the AAO on an untimely motion to reopen or reconsider its rejection decision. The motion is dismissed, because it is untimely filed. On its own motion the AAO reopens and reconsiders its rejection decision. That decision is withdrawn. Consequently, the AAO will now consider the merits of the appeal. The appeal will be summarily dismissed. The petition will be denied.

The AAO's decision to reject the appeal as untimely filed was issued on August 9, 2004, but the motion to reconsider the rejection was not received at the service center until September 28, 2004, or 50 days after the AAO decision. As the regulation at 8 C.F.R. §103.5(a)(1)(i) requires that motions be filed within 30 days of the decision to which it is addressed, the motion was untimely filed. Therefore, it will be dismissed pursuant to 8 C.F.R. §103.5(a)(4).

Upon review, the AAO's August 9, 2004 decision to reject the appeal was erroneous, in that the appeal was timely filed. Accordingly, because there was no legal basis for the decision to reject the appeal, the AAO will reopen and withdraw that decision for good cause, pursuant to 8 C.F.R. §103.5(a)(5)(ii). As the AAO has not previously considered and entered a decision on the merits of the appeal, it does so now.

The petitioner is an international marketing and finance research firm. In order to employ the beneficiary as a market research analyst, 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 two independent grounds, namely, that the petitioner had failed to establish that (1) the proffered position meets the definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A), and (2) the beneficiary is qualified to serve in a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C). The appeal addresses only the beneficiary qualification issue.

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).

Counsel provides no basis for an appeal of the director's denial of the petition on the specialty occupation issue. Counsel submits a Form I-290B (Notice of Appeal) without a brief or evidence, and he entered a checkmark at the box at section 2 of the Form I-290B that states: "I am *not* submitting a separate brief or evidence." The only information on the Form I-290B about the grounds for the appeal is this statement, at section 3, which does not address the director's denial of the petition for failure to establish a specialty occupation position:

The Officer concludes that the Beneficiary does not possess the equivalent of a Bachelor[']s degree and fails to provide any facts or reasons for such conclusion, in spite of the fact that the Beneficiary provided substantial evidence of such through a qualified expert.

Counsel fails to specify how the director made any erroneous conclusion of law or statement of fact with regard to denial of the petition on the basis that the evidence of record does not establish that the petitioner is proffering a specialty occupation position. As neither the petitioner nor counsel presents additional evidence on appeal to overcome the specialty occupation basis of the director's decision, 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: Counsel's motion is dismissed as untimely. Upon its own motion, the AAO withdraws its previous decision, dated August 9, 2004. Upon consideration of the appeal, the appeal is dismissed. The petition is denied.