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U.S. Citizenship
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FILE: LIN 04 170 50932 Office: NEBRASKA SERVICE CENTER Date: **AUG 07 2006**

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.

Handwritten signature of Robert P. Wiemann in black ink.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. A subsequent appeal was untimely filed and thus treated as a motion to reopen. The director affirmed his previous decision. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a nursing registry that seeks to employ the beneficiary as a staff nurse. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 because the proffered position is not a specialty occupation. On appeal, the petitioner submits a letter and additional evidence. The petitioner states, in part, that the proffered position is that of a nurse supervisor who will work in its client's admissions department to focus on patients afflicted with end-stage renal disorders and others with liver and kidney disorders. The petitioner submits a new job description entitled "Nurse Supervisor/Neprology (Diseases associated with kidney and urinary system)," with job duties that entail, in part, coordinating and supervising the activities of two other specialty nephrology nurses.

On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). In this case, the proffered position, as reflected on the petition, is that of a staff nurse, with a job description of generalized duties for that of a "registered nurse."

The AAO cannot consider the arguments raised by the petitioner on appeal, as they relate to the new job classification of the position as a supervisory nurse. If the petitioner wishes to employ the beneficiary as a nurse supervisor, it must file a new petition, with fee.

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).

The petitioner's statements on appeal do not specify how the director made any erroneous conclusion of law or statement of fact in denying the petition. As the petitioner does not 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.