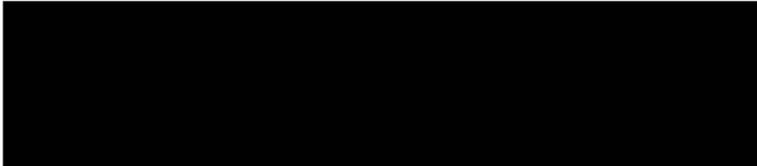


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U.S. Citizenship
and Immigration
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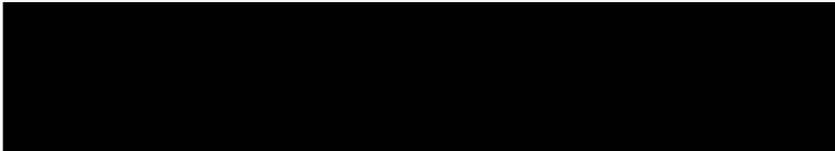
FILE: LIN 05 032 54620 Office: NEBRASKA SERVICE CENTER Date: **JUL 14 2006**

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.

for *Michael T. Kelly*
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The acting director of the Nebraska Service Center 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 business providing direct marketing services, with 34 employees. It seeks to employ the beneficiary as a senior account executive 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 based on his determination that the record did not establish the proffered position as a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request; (4) the director's denial; and (5) Form I-290B, with a letter from the petitioner. The AAO reviewed the record in its entirety before reaching its decision.

On appeal, the petitioner requests that U.S. Citizenship and Immigration Services (CIS) accept a "proper job description" for the proffered position and provides a new list of duties to be performed by its senior account executive. Additionally, it documents its employment of other senior account executives and provides evidence of hiring practices for senior account executives within the marketing industry. The AAO will not, however, consider the submitted evidence.

The duties of a proffered position may not be changed on appeal. In the instant case, the petitioner seeks to amend the job description provided by counsel in response to the director's request for evidence. However, 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. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may also 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). Therefore, the AAO will not consider the petitioner's amended description of the proffered position's duties.

Moreover, 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). In the instant case, the appeal offers only the additional evidence previously noted. The petitioner does not indicate that the director made an erroneous conclusion of law or statement of fact in denying the petition. Accordingly, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

ORDER: The appeal is summarily dismissed. The petition is denied.