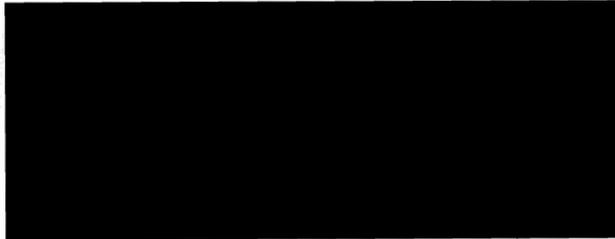


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FILE: WAC 02 268 50128 Office: CALIFORNIA SERVICE CENTER Date: JUL 28 2006

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 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 software development and outsourcing company that seeks to employ the beneficiary as a software engineer. 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 because the petitioner did not establish that the beneficiary is qualified to perform the duties of a specialty occupation.

Counsel submitted a timely Form I-290B on February 24, 2004 and indicated that he would be submitting a separate brief or evidence within 30 days. On April 19, 2006, the AAO sent counsel a fax requesting a copy of the brief or evidence that had been submitted. Counsel did not reply. Therefore, the record is complete.

On September 9, 2003, the director requested the petitioner to submit a copy of the beneficiary's school transcripts and a foreign educational credentials evaluation. On November 19, 2003, counsel responded and requested a 60-day extension of time to file a response to the request for evidence due to the beneficiary's travel schedule. Counsel stated that he would submit the response by February 2, 2004. There is no provision in the regulations for an extension of time to file a response to a request for evidence. The regulations state, "[T]he applicant shall be given 12 weeks to respond to a request for evidence. Additional time may not be granted." 8 C.F.R. § 103.2(8). Therefore, on January 24, 2004, the director denied the petition.

On appeal, counsel states that the petitioner could not respond to the director's request for evidence within the allotted time, but that the petitioner had "obtained the documents requested and need only to have them translated into English and Evaluate the level of education of the Beneficiary." No evidence was ever submitted.

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. As neither counsel nor the petitioner present any additional argument or 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.