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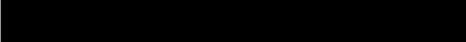
U.S. Citizenship
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FILE: EAC 04 242 51090 Office: VERMONT SERVICE CENTER Date: **SEP 10 2007**

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, 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 dismissed. The petition will be denied.

The petitioner is a pharmaceutical corporation that employs the beneficiary as a Supervisor, Process Validation Analytical R&D. The petitioner seeks to extend for a seventh year the beneficiary's classification as a nonimmigrant worker in a specialty occupation (H-1B status) 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, after the beneficiary had worked in the United States in "H" or "L" status since 1996, the petitioner did not submit the requested documentation in the director's request for evidence (RFE), namely, evidence that an application for labor certification had been pending 365 days or more at the time of filing the instant petition. The director denied former counsel's request for additional time to submit the requested documentation and, therefore, determined that the beneficiary did not satisfy the requirements for an extension of stay under the "American Competitiveness in the Twenty-First Century Act," (AC21) and the Twenty-First Century Department of Justice Appropriations Authorization Act" (21st Century DOJ Appropriations Authorization Act).

On appeal, the petitioner's new counsel submits a brief and additional documentation, including an affidavit, dated April 12, 2005, from the petitioner's former counsel.

The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

In his April 12, 2005 affidavit, the petitioner's former counsel indicates that on or about August 15, 2001, he filed a labor certification application on behalf of the beneficiary in the position of Supervisor, Process Validation Analytical R&D for the petitioner. He also indicates that because he cannot locate any evidence of such filing, an attempt would be made to recreate the file. However, no further documents have been submitted. The record contains no evidence that the labor certification application was ever filed. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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's observations on appeal are noted. However, they do not specify how the director made an erroneous conclusion of law or statement of fact when denying the petition. Without documentary evidence to support the

claim, the assertions of counsel will not satisfy the petitioner's burden of proof. Again, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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. The petition is denied.