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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: EAC 06 263 51356 Office: VERMONT SERVICE CENTER Date: JAN 03 2008

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:

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO). The appeal will be summarily dismissed.

The petitioner provides petroleum exploration and development consulting services. It seeks to employ the beneficiary as a senior geophysicist. Accordingly the petitioner endeavors to classify the beneficiary as a nonimmigrant 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).

On January 19, 2007, the director denied the petition. The director observed: that the beneficiary holds TN classification; that the petitioner indicated on the Form I-129 its intent to change the beneficiary's status from TN to an H-1B classification; that the petitioner requested consideration of the petition based on a Free Trade Agreement with Canada; and that in response to the director's request for clarification on the requested classification, the petitioner confirmed it was seeking a change of status for the beneficiary from TN to H-1B and requested an amended start date to reflect employment beginning in fiscal year 2008.

The director cites 8 C.F.R. § 214.2(h)(9)(i)(B): "The petition may not be filed or approved earlier than six months before the date of actual need for the beneficiary's services or training." The director found that as the petitioner's requested new start date is on or after October 1, 2007, the petition had been filed more than six months prior to the actual need for the beneficiary's services or training.

The record of proceeding before the AAO includes: (1) the Form I-129 filed on September 8, 2006; (2) the director's October 26, 2006 request for further evidence (RFE); (3) the petitioner's November 20, 2006 response to the RFE; (4) the director's January 19, 2007 denial decision; and (5) the Form I-290B. The AAO has considered the record in its entirety.

On February 20, 2007, the Vermont Service Center received a Form I-290B, Notice of Appeal, from the petitioner indicating that a brief and/or additional evidence would not be submitted. The petitioner's statement on the Form I-290B reads:

We would like to keep this application in process trying to obtain a H-1B status for 2008. Knowing that in 2006 the maximum number allowed for 2007 was reached by May 26, 2006.

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 statement on the Form I-290B does not provide grounds for appeal. The petitioner does not specifically address the director's decision in the matter and does not identify an erroneous conclusion of law or statement of fact for the appeal. The director considered the petitioner's request to amend the beneficiary's start date and determined that Citizenship and Immigration Services (CIS) is precluded from accommodating such a request. The petitioner does not take specific issue with any of the director's statements and does not assert that the director's decision is in error. As the petitioner does not present additional evidence or argument on appeal

sufficient 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 summarily dismissed. The petition is denied.