

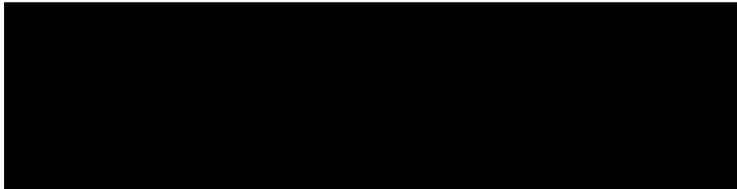
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**



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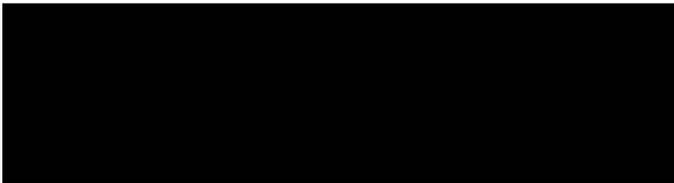
FILE: EAC 07 130 52754 Office: VERMONT SERVICE CENTER Date: OCT 30 2008

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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 develops, produces, and distributes window protection systems. It seeks to employ the beneficiary in a management analyst – supply chain management position. 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 July 20, 2007, the director denied the petition. The director observed that the petitioner had submitted evidence establishing that it employed seven individuals in full-time positions. The director determined however, that the information in the record was insufficient to establish that the beneficiary would be performing the duties of a specialty occupation. The director noted that the petitioner had paraphrased the Department of Labor's *Occupational Outlook Handbook's (Handbook)* overview of the duties of a management analyst, rather than describing the actual duties that would be performed by the beneficiary in the proffered position. The director determined that the job postings submitted by the petitioner to demonstrate an industry-wide educational standard for the occupation of a management analyst were not probative, as the job postings were not from companies in the petitioner's industry or were not of similar size and structure as the petitioner. The director further determined that the petitioner had not demonstrated that the duties of the proffered position would be specialized and complex or that the day-to-day activities of the petitioner's management analyst would require the individual in the position to possess a theoretical and practical application of a body of highly specialized knowledge in a specific field of study. The director concluded that the petitioner had not established the proffered position as a specialty occupation.

On August 22, 2007, the Vermont Service Center received a Form I-290B, Notice of Appeal, and a letter from petitioner's counsel requesting an additional 30 days to review the matter and prepare an appeal. On the Form I-290B, counsel asserts that the beneficiary is integral to the petitioner's operation, that the beneficiary would be performing specialized duties, and that the size of the petitioner is not relevant to the determination. Counsel disagreed with the director's assessment of the proffered position and noted that more information about the job, the business, and beneficiary is needed so that the AAO may approve the case. Counsel claims that the "current operations (wages)" were stated incorrectly, that the company's organizational chart is incorrect, and that the petitioner's previous counsel had made assertions about the beneficiary and the petitioner that either were not fully explained or fully understood by Citizenship and Immigration Services (CIS) or were erroneous. Counsel indicates the belief that if the AAO had more information surrounding the job duties, the petitioning company, and the beneficiary, an approval would be warranted. The record does not include a copy of an appeal brief or further evidence. On October 8, 2008, the AAO sent a facsimile to counsel of record requesting a copy of any brief or documents that had been timely submitted for the AAO's review. As of this date, counsel has not provided a response.

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 assertions and statements on the Form I-290B do not provide grounds for appeal. Counsel acknowledges that more information about the job, the business, and beneficiary is needed so that the AAO may approve the case. Counsel also seems to acknowledge that the record, including the petitioner's prior counsel's assertions, was insufficient, either because the prior counsel did not fully explain or had provided erroneous information. Although acknowledging that the record was deficient, neither counsel nor the petitioner has provided a brief or additional evidence on appeal. As the record is insufficient to establish that the proffered position is a specialty occupation and neither the petitioner nor counsel has provided the necessary clarifying evidence, the appeal must be dismissed.

Neither the petitioner nor counsel specifically addresses the deficiencies in the record and do not identify the director's erroneous conclusions of law or statements of fact for the appeal. Counsel's assertion that the proffered position is a specialty occupation is not supported by documentary evidence. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). 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.