U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

D2

[redacted]

PUBLIC COPY

FILE: WAC 02 041 59183 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary:

JAN 22 2004

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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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, Director
Administrative Appeals Office

DISCUSSION: The service center acting 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 travel agency that seeks to continue employment of the beneficiary as an accountant by having her again classified 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 acting director denied the petition because she determined that the petitioner was late in filing the certified labor condition application (LCA) that pertains to the present petition.

The Form I-129 in this proceeding was filed on December 5, 2001, but without a copy of a Department of Labor certification that the petitioner had filed an LCA. By a request for evidence dated January 28, 2002, the service center requested the certified LCA, and the petitioner filed one on April 22, 2002. It was dated April 18, 2002, and certified the application for the period October 18, 2002 to October 1, 2005.

The acting director based her decision on 8 C.F.R. § 214.2(h)(4)(i)(B)(1), which states:

> Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupation specialty in which the alien(s) will be employed.

On appeal, the petitioner submits only a Form I-290B in which the petitioner states it had not submitted a certified LCA with the petition because "[it] was misinformed on the issue of filing the extension of the H-1B visa for [its] employee." No details are provided.

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, the petitioner fails to specify how the director made any erroneous conclusion of law or statement of fact in denying the petition. As the petitioner does not present any additional evidence on appeal to overcome the decision of the acting 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.