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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: LIN 03 098 53829 Office: NEBRASKA SERVICE CENTER Date: MAY 04 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

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 Mari Johnson

Robert P. Wiemann, Director
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 wholesaler and retailer of dry food and merchandise. It seeks to employ the beneficiary as a financial analyst, and endeavors to classify him 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).

As stated in 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. The director determined that the proffered position was not a specialty occupation. Accordingly, the petition was denied.

The duties assigned to the proffered position with the filing of the I-129 petition were detailed as follows: analyze financial information detailing assets, liabilities, and capital; and prepare balance sheets, profit and loss statements, and other reports to summarize current and projected company financial position using a calculator and computer. In the petitioner's response to the director's request for evidence the petitioner set forth a completely new set of duties, indicating that only five per cent of the beneficiary's time would be spent providing accounting services. The remaining 95 per cent of the beneficiary's time would be utilized: conducting studies which provide detailed cost information not supplied by general accounting systems; providing financial analysis, specifically for clients; and establishing research methodology. The director correctly held that the petitioner could not materially change the duties of the offered position subsequent to the filing of the I-129 petition, and denied the petition finding that the position detailed with the filing of the aforementioned petition did not qualify as a specialty occupation.

On appeal, counsel states that the director abused his discretion, and that the director's decision was arbitrary and capricious. Counsel further indicates that the director stated in his decision that the petitioner was a small company, and that the offered position must, therefore, be that of a bookkeeper. The director made no such statement or analogy. Counsel then refers to job advertisements for financial analysts/budget analysts and states that those advertisements indicate that the offered position is a specialty occupation. The advertisements referenced are completely unrelated to the duties of the position detailed with the filing of the petition. Counsel has not specifically referenced any erroneous conclusion of law or statement of fact upon which the appeal is based. The appellant must do more than simply ask for an appeal. It must clearly demonstrate the basis for the appeal. This, the appellant has failed to do. As such, the appeal must be dismissed.

ORDER: The appeal is dismissed.