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Washington, DC 20529

U.S. Citizenship and Immigration Services

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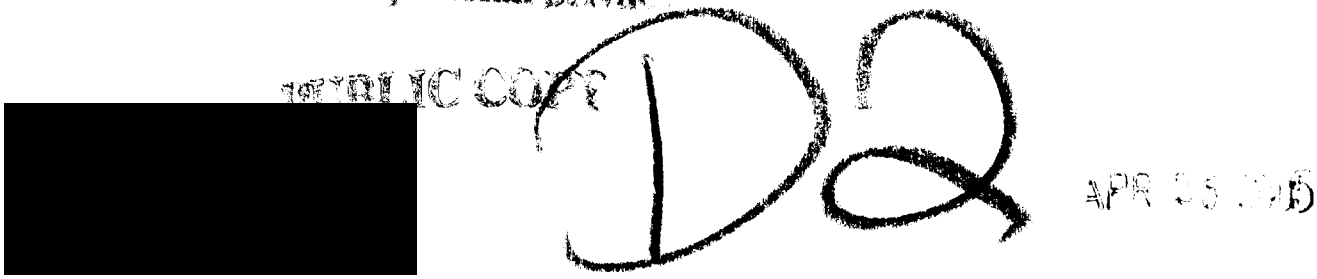

APR 25 2005

FILE: EAC 03 055 55673 Office: VERMONT SERVICE CENTER Date:

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition. The Administrative Appeals Office (AAO) subsequently incorrectly rejected the appeal as untimely filed. The AAO then reopened the matter on its own motion, but adjudicated the appeal prior to the expiration of the 30-day period within which the petitioner had to supplement the record. The AAO again reopened the matter on its own motion, and gave the petitioner 30 days within which to supplement the record. The appeal will be dismissed. The AAO's decision of August 23, 2004 will be affirmed. The petition will be denied.

The petitioner provides beauty enhancement services and products. It seeks to employ the beneficiary as an operations manager. The petitioner, therefore, endeavors to classify the beneficiary 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 director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel states that the proffered position qualifies as a specialty occupation.

On August 23, 2004, the AAO dismissed the appeal and denied the petition; however, this decision occurred prior to the expiration of the 30-day period in which the petitioner had to supplement the appeal. On January 18, 2005, the AAO again reopened the matter on its own motion and provided the petitioner an additional 30-day period in which to supplement the appeal. On February 3, 2005, the AAO received a request from counsel to extend the 30-day period to March 18, 2005. On February 4, 2005, the AAO granted this request. As of this date, nothing further has been received. As counsel has failed to address any of the issues decided in the previous AAO decision of August 23, 2004, or to submit any additional arguments or evidence in support of its position, the appeal will be dismissed. The AAO adopts its previous decision and incorporates its statements of facts, law, and analysis herein by reference.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The AAO's August 23, 2004 decision is affirmed. The petition is denied.