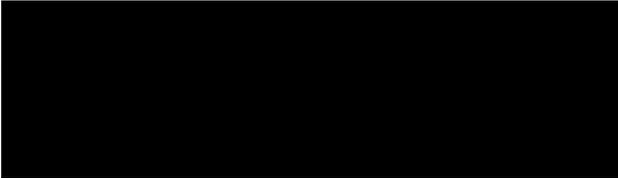


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FILE: WAC 04 054 50655 Office: CALIFORNIA SERVICE CENTER Date: AUG 24 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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.

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 business that provides board, lodging, health care, and recreation services to developmentally disabled and elderly persons. It seeks to employ the beneficiary as an accountant. 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 on the basis that the proposed position was not a specialty occupation.

On May 17, 2004, counsel submitted Form I-290B (Notice of Appeal) without a brief or evidence. Although counsel marked the box at section two of the Form I-290B to indicate that a brief and/or evidence would be sent within 30 days, the AAO received neither. The AAO faxed a follow-up letter to counsel's office on August 3, 2005, requesting that the brief and/or additional evidence be sent within five days.

Counsel responded to the AAO's facsimile on August 13, 2005. Counsel indicated that he had not sent the brief and/or additional evidence within the 30-day period in 2004. Counsel requested that the AAO grant an additional ten days so that he could complete a brief.

The AAO denied the request for an additional ten days within which to submit a brief and/or additional evidence. The purpose of the AAO's facsimile to counsel was to obtain the brief and/or additional evidence that counsel had indicated would arrive within 30 days after May 17, 2004, not to allow counsel additional time to write a brief.

If counsel required additional time to submit the brief and/or additional evidence, he should have requested it at the time the I-290B was filed, in accordance with 8 C.F.R. § 103.3(a)(2)(vii). Counsel has not provided good cause for granting the extension beyond the thirty days provided by regulation. Therefore, pursuant to 8 C.F.R. § 103.3(a)(2)(vii), counsel's request for additional time to submit a brief and/or additional evidence was denied as a matter of discretion for failure to show good cause.

Thus, the AAO deems the record complete and ready for adjudication.

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 only information that counsel submits about the basis of the appeal is this statement at section three of the Form I-290B:

The service has made a summary decision based on 'opinion' and not fact. The service has determined that a business that grossed \$1,500,000 does not need an accountant. The service has made a determination that the organization does not have the 'organizational complexity to certify a position for an accountant.' The service has made a decision that is arbitrary and capricious and without any basis in fact.

Counsel fails to specify how the director made any erroneous conclusion of law or statement of fact in denying the petition. As neither counsel nor the petitioner presents additional evidence on appeal 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 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 appeal is dismissed. The petition is denied.