

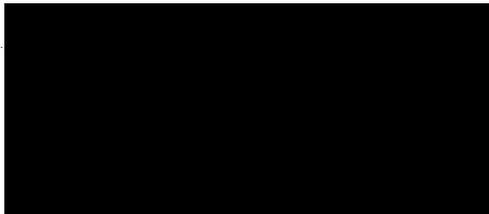
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U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: SRC 03 054 53029 Office: TEXAS SERVICE CENTER Date: JAN 05 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 Director of the Texas Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal shall be dismissed.

The petitioner is a medical supply company that seeks to employ the beneficiary as a marketing manager. The director denied the petition on the basis that the petitioner had abandoned the petition.

Counsel submitted a timely Form I-290B on November 3, 2003. On the Form I-290B, counsel states that the evidence that is now submitted on appeal had, in fact, been received timely by the Texas Service Center. Thus, counsel requests that Citizenship and Immigration Services (CIS) reopen the case to consider the additional evidence because the petitioner had not abandoned the petition.

The evidentiary record also contains a September 9, 2003 letter from the director of the Texas Service Center. In this letter, the director reopened the case and reviewed the petitioner's additional evidence. The director found the evidence unpersuasive in establishing that: (1) the proffered position qualified as a specialty occupation; and (2) the beneficiary was qualified to perform the duties of a specialty occupation.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states that 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. On the Form I-290B, counsel fails to specify how the director made any erroneous conclusion of law or statement of fact in denying the petition. As neither the petitioner nor counsel 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 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.