U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] SRC 05 248 52193 Office: TEXAS SERVICE CENTER Date: AUG 2 0 2007

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, Chief
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 dismissed. The petition will be denied.

The petitioner is a medical research company that seeks to extend its authorization to employ the beneficiary as a medical research assistant. The petitioner seeks to extend for a seventh year the beneficiary's classification as a nonimmigrant worker in a specialty occupation (H-1B status) 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 beneficiary had completed six full years allowed under the H-1B classification and did not satisfy the requirements for an extension of stay under the "American Competitiveness in the Twenty-First Century Act," (AC21) and the Twenty-First Century Department of Justice Appropriations Authorization Act" (21st Century DOJ Appropriations Authorization Act) because contrary to the petitioner's former counsel's claim in an October 26, 2005 letter: the extension request was based on an approved labor certification that was filed by the beneficiary's previous employer whose Form I-140 filed on behalf of the beneficiary had been denied; a second Form ETA 9089 labor certification that was filed under PERM on behalf of the same beneficiary was also denied; and the petitioner failed to comply with the director's RFE to submit documentation from the U.S. Department of Labor that an appeal of the denial of the Form ETA 9089 had been filed. In addition, the director determined: the second Form I-140, filed on November 21, 2005, was filed after the September 12, 2005 filing date of the instant petition and thus had not been pending the required 365 days; and, the second Form I-140 was improperly filed by the beneficiary. The director determined that, in view of the foregoing, the petitioner willfully misrepresented and falsified information in order to obtain a benefit and thus the beneficiary was not entitled to be employed for a seventh year under the provisions of AC21.

On the Form I-290B, signed by the petitioner's new counsel on February 9, 2006, the petitioner's new counsel stated:

> We disagree with the Service's decision because there is still a pending Permanent Alien Labor Certification on behalf of [the beneficiary]. This case was received by Oklahoma Employment State Commission on October 16, 2003 and is now pending at the Dallas Backlog Elimination Center. The case has been pending for more than 365 days. Therefore, the petition to extend the H-1B status for [the beneficiary] should be approved.

Counsel checked the block indicating that he would be sending a brief and/or evidence to the AAO within 30 days. The AAO sent a fax to the petitioner on June 5, 2007, informing counsel that no separate brief and/or evidence was received, to confirm whether or not he had sent anything else in this matter, and as a courtesy, providing him with five days to respond. However, the petitioner did not respond and no further documents have been received by the AAO to date. Thus, the record is considered complete.

CIS records indicate that an I-140 was filed by [redacted] pursuant to an approved labor certification filed October 16, 2003. That I-140 petition was denied, and thus the underlying labor certification may not be relied upon to obtain a 7th year extension under AC21.

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).

Counsel's observations on appeal are noted. However, they do not specify how the director made an erroneous conclusion of law or statement of fact when denying the petition. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). As the petitioner does not present 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. The petition is denied.