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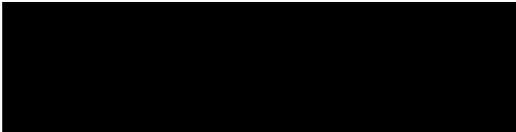
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FILE: SRC 03 086 50597 Office: TEXAS SERVICE CENTER Date: JUN 15 2006

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

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 summarily dismissed.

The petitioner is an automobile commercialization and servicing company engaged in the servicing of automobiles. It seeks to employ the beneficiary as a manager of mechanics 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 is not a specialty occupation, that the beneficiary is not qualified to perform the duties of a specialty occupation, and that the Labor Condition Application (LCA) filed in relation to the position of manager of mechanics was not certified prior to the filing of the initial petition. The initial Form I-129 petition was filed on January 31, 2003. The LCA for the position of manager of mechanics was certified on September 8, 2003. Accordingly, the petition was denied.

On appeal, the petitioner states that an experiential evaluation prepared [REDACTED] establishes that the beneficiary has the equivalent of a bachelor's degree in business administration from an accredited college or university in the United States, and that the beneficiary is, therefore, qualified to perform the duties of a specialty occupation. The petitioner further indicates that the *Occupational Information Network's (O*NET)* classification of the offered position establishes that it is a specialty occupation. The petitioner did not, however, specifically identify any erroneous conclusion of law or statement of fact upon which the appeal is based with reference to the director's decision that a certified LCA was not obtained prior to the filing of the Form I-129 petition as required by 8 C.F.R. § 214.2(h)(4)(i)(B)(1). The appellant must do more than simply ask for an appeal. It must clearly demonstrate the basis for the appeal. One reason for the director's denial specifically referred to the untimely certification of the LCA. The appellant did not identify any erroneous conclusion of law or statement of fact with respect to this issue. As such, the appeal must be dismissed.

It should further be noted that the initial Form I-129 petition filed and signed by counsel was for the position of a financial analyst. Counsel now states that the petition was prepared by his paralegal who misrepresented him before the petitioner and prepared a false petition for the position of financial analyst. Counsel signed the petition yet states that he was unaware of its contents. Counsel then sought to submit an amended petition for a manager of mechanics based upon the fraudulent petition prepared by his paralegal. In support of his request to amend the petition, counsel submitted an affidavit from the petitioner detailing the actions of counsel's paralegal, a letter from bar counsel for the Florida Bar Association referencing an unlicensed practice of law investigation of counsel's paralegal based on a complaint filed by counsel, and an affidavit signed by counsel. Based upon these submissions, the director inappropriately considered the amended petition submitted on behalf of the petitioner. The AAO finds that the director misapplied the law relating to ineffective assistance of counsel, and should not have allowed the petitioner to amend the petition. Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why

not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). In this instance, counsel seeks to file an amended petition based upon the unauthorized practice of law by a member of his staff even though counsel himself signed the very petition that he claims was fraudulently prepared without his knowledge. The record does not reflect that a complaint was filed with disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, or indicate why such complaint was not filed. As such, the director should not have considered the amended petition.

Counsel fails to specify how the director made any erroneous conclusion of law or statement of fact in denying the petition with respect to the filing of the LCA. As neither the petitioner nor counsel presents additional evidence on appeal to overcome the decision of the director in that regard, 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.