U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: EAC 08 139 51718 Office: VERMONT SERVICE CENTER Date: APR 30 2010

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The acting 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 a corporation engaged in the business of providing software development and consulting services. To employ the beneficiary in a position that it designates as a Programmer Analyst, the petitioner 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 acting director denied the petition on two independent grounds, namely, his determinations that the evidence of record failed to establish: (1) that that the proffered position is a specialty occupation as that term is defined by section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), and the implementing regulations at 8 C.F.R. § 214.2(h)(4); and (2) that the Labor Condition Application corresponds to the petition.[1]

On July 14, 2008 counsel for the petitioner submitted a Form I-290B (Notice of Appeal or Motion) without a brief or evidence. The only comment that counsel submits about the basis of the appeal is the following statement, at Part 3 of the Form I-290B, that a brief and additional evidence would be forthcoming:

> We hereby request you to grant 30 days within which we will send the brief with additional evidences [sic] with respect to the denial of the above referenced case.

Although counsel checked box B at section 2 of the Form I-290B, indicating that he would send a brief and/or evidence within 30 days, the AAO has received neither. Accordingly, the record of proceeding is deemed complete as currently constituted.

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[1] Because it does not articulate a valid basis for denial in the context of this particular record of proceeding, the AAO withdraws that part of the director's decision denying the petition "in accordance with 8 C.F.R. [§] 214.2(h)(4)(D)(5) and 8 CRF [sic] [§] 214.2(h)(11)(ii)." The regulation at 8 C.F.R. § 214.2(h)(4)(D)(5), which deals with USCIS assessment of a beneficiary's qualifications to serve in a specialty occupation position, is not relevant, as the beneficiary's qualifications were not a subject of the director's decision. The regulation at 8 C.F.R. § 214.2(h)(11)(ii) is also not relevant, as it deals only with the grounds for automatic revocation of approval of a petition, an area unrelated to the present matter. Further, in light of his express statement that it appeared that the petitioner qualified as an "employer" entity eligible to file the petition, close reading of his decision reveals that the employment aspect with which the director took issue is not the petitioner's qualification to file the petition as a United States employer, but rather the insufficiency of evidence to support the petitioner's claim to have H-1B caliber work for the beneficiary.

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 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 summarily dismissed.