

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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



**U.S. Citizenship
and Immigration
Services**

D2

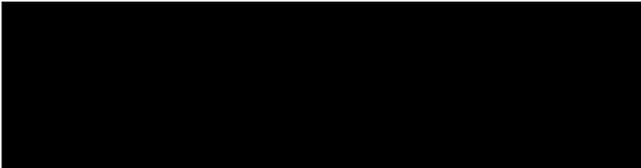


FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: JUN 01 2010

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
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 a private firm operating as a licensed child-development center. To employ the beneficiary in what the petitioner designates as a kindergarten school teacher position, the petitioner seeks to classify her 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 because she determined that the evidence of record failed to establish that the proffered position is a specialty occupation as that term is defined by section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and the implementing regulations at 8 C.F.R. § 214.2(h)(4).

On August 18, 2009, 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 are the following statements at Part 3 of the Form I-290B, which broadly assert that the duties of the proffered position comprise a specialty occupation position, and which request 30 days in which to submit a brief:

The Petitioner has demonstrated that the offered position of a Kindergarten School Teacher is in fact a specialty occupation within the meaning of the regulations. The specialty occupation duties as described by [the] Petitioner are not incidental to the primary functions as concluded by the Service Center.¹

[The] Petitioner is requesting thirty (30) days from the filing of this [Form] I-290B in which to submit their [sic] written Brief in support of their [sic] appeal.

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.

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).

¹ While an introductory paragraph in the director's decision, regarding general analytical principles, states that "performing specialty occupation duties that are incidental to the primary functions is insufficient to establish that the duties to be performed qualify as a specialty occupation," the AAO notes that the director's decision does not acknowledge that the proffered position involves the performance of any specialty occupation duties.

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.