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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

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[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER

Date: **NOV 05 2010**

IN RE: Petitioner:
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:

[REDACTED]

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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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.

On the Form I-129, the petitioner specifies “school” as its type of business, and, on appeal, the petitioner refers to itself as a non-profit organization with an “enrollment of about 500 pre-kindergarten/toddlers children” and “120 educators and staff on payroll.” To employ the beneficiary in what the petitioner designates as a group teacher position, the petitioner filed this H-1B petition 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 director denied the petition on the basis of his determination that the proffered position did not qualify as a specialty occupation.

On July 22, 2010, the petitioner submitted a Form I-290B (Notice of Appeal or Motion), signed by its Executive Director, without a brief or evidence. The only comments that the petitioner submits about the appeal is a three-paragraph statement at Part 3 of the Form I-290B, which states, verbatim:

This is to reiterate our need for the services of [the beneficiary] as a Group Teacher in our school. The shortage of qualified teachers in New York City especially in our area of the Bronx, remained unresolved. Our situation is made even more intense by the high turnover rate for our grouped teachers as the New York public school system lures them. Needless to say, we need the services of [the beneficiary].

We are non-profit organization established in 1970. Presently with an annual funding of 4,600,000.00 annually. It has enrollment of about 580 pre-kindergarten/toddlers children and has 120 educators and staff on the payroll. All of our teachers requires to have bachelors degrees in early childhood or elementary education.¹ Our teachers should have the ability to supervise the planning and execution of a program to provide quality learning experiences for children and classroom curriculum. Planning, facilitated and assessed lesson plans such as in reading, math, science, social studies, arts and crafts, music and movements. Write and plan monthly activities appropriate for the age group assigned. Plan daily activities to help reach program goals and needs of the children. Set goals for each child and for the classroom group. Use teaching methods that will foster emotional, social, and cognitive growth; Make observations for each child developments. Promote positive growth and parents involvements in children’s progress and developments. Maintain

¹ The AAO notes that, as indicated in the director’s decision, the petitioner did not provide the director with documentary evidence of the educational credentials that it has required for other group teacher positions in its organization, although such evidence was specifically requested in the service center’s request for additional information (RFE).

children's written reports and completes administrative reports such as anecdotal records, lesson plans and outcome reports. Participate in team and curriculum meetings.²

We are hoping our appeal for [the beneficiary's] petition will be considered. Thank you very much.

The petitioner's Executive Director checked box A at section 2 of the Form I-290B, indicating that there would be no additional submissions on appeal; and there have been none. Therefore, 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).

The petitioner fails to specify how the director made any erroneous conclusion of law or statement of fact in denying the petition. As the petitioner presents no 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.

² The duties enunciated in the Form I-290B, which expand upon the set of duties that was presented both initially and in response to the RFE, are not relevant to this appeal. This is because they were not submitted prior to the director's decision, even though they are a type of additional evidence specifically sought in the RFE.