identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

D2

Date: JUL 05 2011 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

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:

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 $630. 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,

for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, 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 assisted living facility that seeks to employ the beneficiary as a management/marketing specialist. The petitioner, therefore, 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 director denied the petition, finding that the petitioner had failed to: (1) establish that the beneficiary qualified for an exemption to the six-year limitation of stay in H-1B status; and (2) submit requested material evidence demonstrating that the proffered position was a specialty occupation.

The petitioner, through counsel, submitted a timely Form I-290B on August 24, 2009 and indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days. As of this date, however, the AAO has not received any additional evidence into the record. Therefore, the record is considered complete as currently constituted.

The director provided a detailed analysis and specifically cited the deficiencies in the evidence in the course of the denial. The petitioner's statement on Form I-290B does not specifically identify any errors on the part of the director and is therefore insufficient to overcome the conclusions the director reached based on the evidence submitted by the petitioner. Specifically, the petitioner stated:

> The beneficiary has an approved labor certification application, which was previously filed by his former employer. An I-140 petition was subsequently filed, but due to omissions of his employer's counsel, the I-140 was rejected due to untimely filing. Under the circumstances, following the rules and [regulations] governing H1B extensions beyond 6 year limit, the beneficiary is eligible for the renewal of his H1B status.
>
> The beneficiary's academic credentials have been previously evaluated, with a copy of the evaluation report submitted with the petition. His degree has been deemed the equivalent of a bachelor's degree in business. The expert opinion letter was submitted as corroborating evidence of the proffered position's specialized nature and complexity of duties, that warrant the H1B classification. The Service Center erred in considering the expert opinion as evidence establishing the beneficiary's credentials. Instead, it should have considered the expert opinion as an evaluation of the proffered position and its duties.

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. Although the petitioner contends that

"[t]he Service Center erred in considering the expert opinion as evidence establishing the beneficiary's credentials," and instead "should have considered the expert opinion as an evaluation of the proffered position and its duties," the AAO notes from a cursory review of the record that the expert opinion submitted was dated July 10, 2003 and pertains to a person identified as [redacted] not the beneficiary. The director noted this in the denial, yet the petitioner makes no attempt to explain this discrepancy on appeal. Therefore, the petitioner's contention that the director's failure to consider this document is misplaced, since the director specifically noted that the expert opinion did not correspond to the instant petition.

The petitioner makes no claim on the Form I-290B that the director's denial of the petition on the two grounds cited above constituted any erroneous conclusions of law or statements of fact. 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.