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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

D2

[redacted]

Date: FEB 0 9 2012 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: SELF-REPRESENTED

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director of the California Service Center denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner claims to be a staffing/human resources and recruitment agency that seeks the employment of the beneficiary as a human resource specialist. Thus, the petitioner endeavors to employ 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).

On February 3, 2010, the director denied the petition determining that the petitioner had not complied with the requirements for filing a Form I-129, Petition for a Nonimmigrant Worker.

On March 5, 2010, the petitioner filed an appeal with a brief and supporting documentation. At Part 3 of the Form I-290B, the petitioner submits the following statement about the appeal:

> Pursuant to Title 8, Code of Federal Regulation (8 "C.F.R.") 214.2(h)(4)(i)(B)(1) which states that before filing a petition for HI-B [sic] classification in a specialty occupation, the petitioner shall obtain certification from the Department of Labor that [it]has filed a labor condition application in the occupational specialty in which the alien(s) will be employed. As a petitioner, we follow[ed] the procedure, however, when we filed the LCA, the DOL, requires [sic] such [sic] additional documents, which we submitted, and as per as instruction [sic], they advise[d] us to make another application, then we make [sic] and submitted and when we received the confirmation, the LCA number was changed. Since, [sic] the I-129 was submitted, [sic] before the new LCA, the number of [the] LCA is [sic] different as you mentioned in [the] denial letter.
>
> Therefore, since I got a new LCA approval, we will use the LCA approval by [sic] a new application, which I will submit today together [with] a new I-129, so that there will be a continuance process of my application (please consider).
>
> In conclusion, please see attached[.] [T]he new I-129 together with the approval [sic] (LCA) from the Department of Labor.
>
> I may [sic] request for the immediate approval of this application. Thank you.

In the brief, the petitioner states the following:

> Pursuant to Title 8, C.F.R. 214.2(h)(4)(iii)(8) the certified LCA was submitted after securing the certification from Department of Labor with the job title of "Human Resource Manager". Subsequent to this certification an I-129 Petition was

submitted to change the status of a nonimmigrant worker to H-1B to perform temporary duties as a Human Resource Manager.

Upon realizing the difference of specialty occupations and following the authorization from the Department of Labor to submit a new LCA (subsequently certified) we have changed the I-129 and all documents to reflect the proffered position in support of the certified Form 9035, LCA by DOL.

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 does not present 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).

Furthermore, on appeal, a petitioner cannot file a new petition, offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a specialty occupation. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 ('Reg. Comm'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). If significant changes are made to the initial request for approval, the petitioner must file a new petition with a service center.

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.