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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: OCT 0 4 2013 OFFICE: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:
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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

for
Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, revoked the previously approved nonimmigrant visa petition on June 11, 2010. The petitioner filed a motion to reopen on June 25, 2010, which was granted by the director. After affording the petitioner the opportunity to further supplement the record with additional evidence in support of eligibility, the director affirmed his previous findings in a decision dated June 5, 2012.[1] The petitioner subsequently filed a second motion to reopen on July 6, 2012. The director reopened the proceedings based on the petitioner's motion but once again affirmed his previous decision to revoke the petition's approval in a decision dated December 4, 2012. On January 7, 2013, counsel for the petitioner filed an appeal with the Administrative Appeals Office. The appeal will be dismissed. The petition's approval will remain revoked.

In the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a software solutions and consulting services company. In order to employ the beneficiary in what it designates as a programmer analyst position, the petitioner seeks to classify him 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 petition was initially approved on May 9, 2008. Upon receipt of new information from the U.S. Consulate in Chennai, India, the director issued a Notice of Intent to Revoke (NOIR) the petition on March 4, 2010, and revoked the petition's approval on June 11, 2010.

The director provided a detailed analysis and specifically cited the deficiencies in the evidence in the course of his previous decisions. Counsel's appellate brief 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.

Counsel's brief provides a statement of the case which includes a procedural history of the previous decisions of the director and the petitioner's motions filed in response thereto. Counsel also states that "the petitioner has demonstrated that the beneficiary would be working on a genuine in house project." However, counsel does not specifically identify what part of the director's analysis was incorrect and the reason(s) why it was incorrect. Moreover, counsel does not claim at any time on appeal that the director's prior decisions were erroneous. In other words, counsel's statement in the appeal brief, without specifically identifying any errors on the part of the director, are simply insufficient to overcome the well-founded and logical conclusions the director reached based on the evidence or lack of evidence submitted by the petitioner. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

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[1] In its June 25, 2010 motion, the petitioner claimed it never received the March 4, 2010 NOIR. The director resent the NOIR on August 16, 2010 and afforded the petitioner the opportunity to further supplement the record with additional evidence. The petitioner submitted a response to the NOIR on September 29, 2010, which was considered by the director prior to his June 5, 2012 decision affirming his previous findings.

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 revoking the petition's approval; therefore, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

Even if the instant appeal was not summarily dismissed for the reasons set forth above, the petition would automatically be revoked. The regulation at 8 C.F.R. § 214.2(h)(11)(ii) states:

> *Immediate and automatic revocation.* The approval of any petition is immediately and automatically revoked if the petitioner goes out of business, ***files a written withdrawal of the petition***, or the Department of Labor revokes the labor certification upon which the petition is based.

(Emphasis added).

On appeal, counsel states: "[The petitioner] no longer requires the services of this employee. Therefore please terminate the H-1B petition for this employee." It is noted that this statement is repeated twice in the appeal brief. Based on these statements, the petition would have immediately and automatically been revoked pursuant to 8 C.F.R. 214.2(h)(11)(ii) had the matter not been summarily dismissed.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is summarily dismissed. The petition remains revoked.