

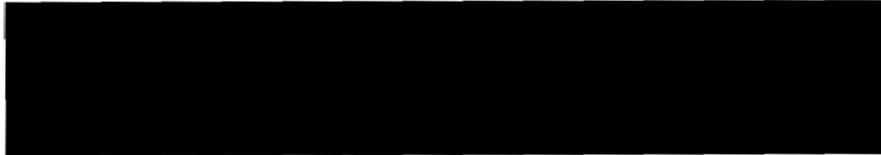


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FILE: WAC 08 022 50331 Office: CALIFORNIA SERVICE CENTER Date: NOV 17 2008

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(iii)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

U n F. Grissom, Acting 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 builder and developer that seeks to employ the beneficiary as a project designing trainee for a period of 24 months. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker trainee pursuant to section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(iii).

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) the petitioner's Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner submitted the Form I-290B on August 8, 2008. The petitioner marked the box at section two of the Form I-290B to indicate that a brief and/or evidence would be sent within thirty days. The AAO did not receive this additional brief and/or evidence. As such, the AAO faxed a follow-up letter to the petitioner on October 27, 2008, requesting that the brief and/or additional evidence be sent within five business days.

The petitioner replied on November 3, 2008. The petitioner states that its failure to file a brief within 30 days was due to circumstances beyond its control: it stated that it tried desperately to reach the beneficiary in order to ascertain whether he was desirous of continuing the application, but that he did not return calls and could not be reached. As such, it filed the Form I-290B in order to preserve its right to appeal. Accordingly, the petitioner requests that the AAO adjudicate the appeal under 8 C.F.R. § 103.5(a)(1)(i), which allows the AAO to adjudicate motions to reopen or reconsider filed beyond the 30-day time limit when the petitioner establishes that the delay was reasonable and beyond its control.

The petitioner's request is misplaced for two reasons. First, the AAO notes that the regulation cited by the petitioner pertains to motions to reopen or reconsider, not appeals. The petitioner marked the box at section two of the Form I-290B to indicate that it was filing an appeal of the director's decision, not a motion to reopen or reconsider. Second, there is no dispute here that the appeal was timely filed; here the petitioner failed to timely submit supporting documentation of its previously-filed and pending appeal. For all of these reasons, the AAO denies the petitioner's request and deems the record complete and ready for adjudication.

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 only new document submitted on appeal is the Form I-290B, which states the following:

Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, our brief will provide documentary evidence that the H3 classification applies to the beneficiary that we've petitioned for and pursuant to 8 C.F.R. 214(h)(7)(ii) as [an] alien trainee, which shows that the proposed training is not available in the alien's country. Our brief will follow and will provide more additional evidence on the training schedule which indicates the general percentage of time spent in classroom training and the training syllabus.

The petitioner has failed to identify any specific erroneous conclusion of law or statement of fact for the appeal. As no additional evidence is presented 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 these proceedings 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 dismissed. The petition is denied.