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

[redacted]

D4

FILE: WAC 09 067 50262 Office: CALIFORNIA SERVICE CENTER Date: DEC 0 1 2009

IN RE: Petitioner: [redacted]
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:

[redacted]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The 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 engaged in the international wholesale and distribution industry and seeks to employ the beneficiary as a wholesale distribution trainee pursuant to section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(H)(iii) for the period from February 5, 2009 to February 5, 2010.

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 Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner submitted the Form I-290B on March 6, 2009. Counsel for 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 30 days. The appeal brief was never received by the AAO, thus, the AAO deems the record 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 only new document submitted on appeal is the Form I-290B, which states the following:

> Petitioner through independent evidence did in fact establish that the proposed training is not available in the Beneficiary's home country of the Philippines; established how the specialized training would be used upon the Beneficiary's return to the Philippines; that the training program is not designed for purposes of recruiting workers for it's domestic operations; and that Petitioner has the physical plant space and the manpower to provide the outlined training. The Service Center's conclusions to the contrary are not supported by the submitted evidence in support of the filing.

In this instance, the petitioner has not specifically identified as a basis for the appeal, nor has the AAO found, an erroneous conclusion of law or a statement of fact in the director's decision. For example, counsel for the petitioner has not specifically identified or explained how or in what way the director erred in finding that the petitioner failed to establish that the proposed training is not available in the beneficiary's home country. Under these circumstances, the regulations mandate the summary dismissal of the appeal.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is summarily dismissed. The petition is denied.