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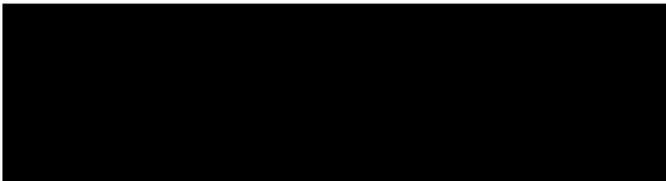
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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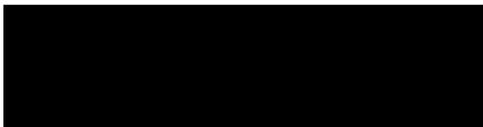


FILE: EAC 06 181 54024 Office: VERMONT SERVICE CENTER Date: DEC 11 2007

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner is a restaurant design and equipment supply company. It seeks to employ the beneficiary as a cost estimator. Accordingly the petitioner endeavors to classify the beneficiary as a nonimmigrant 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 January 16, 2007, the director denied the petition determining that the record: (1) did not establish that the proffered position is a specialty occupation; and (2) did not establish that the beneficiary held at least the equivalent of a United States baccalaureate or higher degree required by a specialty occupation.

On February 6, 2007, the Texas Service Center received a Form I-290B, Notice of Appeal, from the petitioner indicating that a brief and/or additional evidence would not be submitted. The petitioner's statement on the Form I-290B reads:

The reason for my appeal is the wrongful denial of our application for a non-immigrant worker, (H-1B).

Careful review of the record reveals an undated letter prepared by the petitioner's president and chief executive officer. The petitioner requests that Citizenship and Immigration Services (CIS) reconsider its decision regarding the beneficiary. The petitioner asserts that it is in a specialized industry and that such an industry requires an experienced and knowledgeable employee to assist customers with their commercial equipment and millwork needs. The petitioner further contends that the position requires a college degree or equivalent work experience. The petitioner indicates that it has not found anyone qualified to perform the position in the United States and that the beneficiary's knowledge and experience will help it service its customers today and train a United States candidate to fill the position permanently.

Although it is not clear whether the petitioner's letter is part of the appeal, the AAO has considered the petitioner's statements and assertions in the letter.

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's statements in the letter on appeal do not provide grounds for appeal or for a motion to reopen and reconsider. The petitioner does not specifically address the director's decision in the matter and does not identify an erroneous conclusion of law or statement of fact for the appeal. The director considered the petitioner's business, the nature of its industry and the duties of the proposed position, as well as the education and experience of the beneficiary. The director found that the petitioner had not established any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) or that the beneficiary qualified to perform the duties of a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C). The petitioner does not take specific issue with any of the director's statements but asserts only generally that the director's decision is in error and that the proffered position requires a college degree or equivalent work experience. Such assertions without specifically addressing the director's

determinations are insufficient. As the petitioner does not present additional evidence or argument on appeal sufficient 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).

Of note, the petitioner has not satisfied the requirements of a motion to reopen or to reconsider. The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part, that a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Upon review, the petitioner has not submitted new evidence sufficient to meet the requirements for a motion to reopen and has not claimed that the director's decision was based on an incorrect application of law or policy and citing precedent decisions or law in support of this claim. Accordingly, if the petitioner's letter was a request to reopen or to reconsider, the letter does not contain the necessary elements to be found a motion to reopen or to reconsider.

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. The petition is denied.