U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529

U.S. Citizenship and Immigration Services

D1

[redacted]

FILE: WAC 08 146 52955 OFFICE: CALIFORNIA SERVICE CENTER DATE: DEC 03 2009

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:

[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 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 petition will be denied.

The petitioner is an assisted living facility for adults that was established in 2000 and has three employees. It seeks permission to employ the beneficiary as a restorative programs development specialist and, therefore, endeavors to classify 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).

The director denied the petition because the job is not a specialty occupation. Counsel submitted a timely Form I-290B on October 6, 2008, indicating that she would submit a brief or additional evidence to the AAO within 30 days. As of this date, however, the record does not include a brief or any additional evidence. The AAO, therefore, considers the record complete and ready for adjudication.[1]

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states that the AAO may summarily dismiss an appeal "when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal." Given the absence of a brief or additional evidence which may be considered by the AAO, the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, and the appeal must be summarily dismissed for that reason.

Pursuant to section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361, the burden of proof is upon the petitioner to establish eligibility for the benefit it is seeking. Here, the petitioner has not met its burden. Accordingly, the AAO affirms the director's decision to deny the petition and dismisses the appeal.

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

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[1] The regulation at 8 C.F.R. § 103.3(a)(2)(viii) and the instructions to the Form I-290B require the affected party to submit the brief or evidence directly to the AAO, not to the service center or any other federal office. Even if counsel were to submit evidence that a brief was filed with an office other than the AAO, the AAO would not consider the brief on appeal because counsel failed to follow the regulations or the instructions for the proper filing location.