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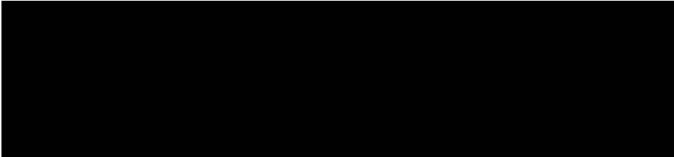
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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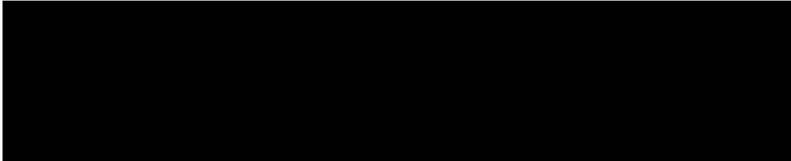
FILE: WAC 07 223 50666 Office: CALIFORNIA SERVICE CENTER Date: OCT 08 2009

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:

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.


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 an advanced software development and consulting company that seeks to employ the beneficiary as a programmer-analyst. The petitioner, therefore, endeavors to extend the beneficiary's classification 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 record of proceeding before the AAO contains the following: (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. The AAO reviewed the record in its entirety before issuing its decision.

Counsel submitted the Form I-290B on February 29, 2008. Counsel marked the box at section two of the Form I-290B to indicate that a brief and/or additional evidence would be sent within 30 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 September 22, 2008, and requested that the brief and/or additional evidence be sent within five business days. The AAO's facsimile stated, in pertinent part, the following:

The regulations do not allow an applicant or petitioner an open-ended or indefinite period of time in which to supplement an appeal once it has been filed. **Therefore, this facsimile is not and should not be construed as requesting or permitting the petitioner and/or its counsel to submit a late brief and/or evidence in response to this request** (emphasis in original).

Counsel responded to the AAO's facsimile on September 24, 2008, and confirmed that he did not submit a brief and/or additional evidence to the AAO as he indicated on the Form I-290B. However, despite the AAO's specific notification that its September 22, 2008 facsimile was not, and should not be construed as, requesting or permitting the petitioner and/or counsel to submit a late brief and/or evidence, counsel nonetheless submitted late evidence from the petitioner, in the form of a September 24, 2008 letter. As this letter was not submitted within the 30-day timeframe described in the Form I-290B, and was only submitted in response to the AAO's facsimile, the AAO will not consider the assertions made in this letter for any purpose, and will adjudicate this petition based upon the record as it existed at the time the appeal was filed.

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).

Counsel's appeal failed to identify any specific erroneous conclusion of law or statement of fact for the appeal. As no additional evidence was presented 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.