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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
and Immigration
Services

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FILE: EAC 06 180 53006 Office: VERMONT SERVICE CENTER Date: OCT 08 2009

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)

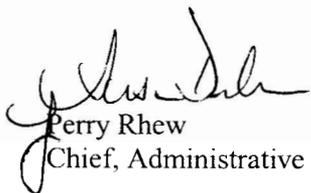
ON BEHALF OF PETITIONER:



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.

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, as required by 8 C.F.R. § 103.5(a)(1)(i).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director revoked approval of 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 software development and consulting company that seeks to employ the beneficiary as a programmer-analyst. The petitioner, 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 approved the petition on August 29, 2006. Upon interviewing the beneficiary in connection with his visa application, the U.S. Consulate General in Chennai, India, returned the petition to the director for further processing. The director issued a notice of intent to revoke approval of the petition (NOIR) on November 5, 2007. The director's NOIR notified the petitioner of the concerns of the Consulate General and afforded the petitioner thirty-three days during which to address such concerns.

The petitioner elected not to respond to the NOIR. As such, the director revoked the petition's approval on March 19, 2008.

The petitioner, through counsel, submitted a timely appeal on April 21, 2008. The petitioner submits the Form I-290B, an appellate brief, and supporting documentation. In general, the director's decision to revoke the approval of a petition will be affirmed, notwithstanding the submission of evidence on appeal, where a petitioner fails to offer a timely explanation or rebuttal to a properly issued notice of intent to revoke. *See Matter of Arias*, 19 I&N Dec. 568, 569 (BIA 1988). Thus, while the petitioner addresses the merits of the notice of intent to revoke on appeal, no explanation has been offered for the petitioner's failure to address these issues in a timely response to the director's notice.

If the petitioner had wanted the submitted information to be considered, it should have submitted this letter in response to the director's NOIR. Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the director issued his decision. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

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).

In the record of proceeding that existed before the director, the petitioner had failed to cite any erroneous conclusion of law or statement of fact, so 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 director's March 19, 2008 decision is affirmed. Approval of the petition is revoked.