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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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FILE: LIN 02 232 53404 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 214(e) of the Immigration and Nationality Act, 8 U.S.C. § 1184(e)

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).


John F. Grissom,
Acting Chief, Administrative Appeals Office

DISCUSSION: The director, Nebraska Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal.¹ The appeal will be summarily dismissed.

The petitioner states that it is a member of the AIG Global Investment Group, Inc. engaged in the management of insurance company investment assets. It seeks to extend its authorization to employ the beneficiary temporarily in the United States as its senior vice president for principal investments pursuant to section 214(e) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(e). The director denied the extension based on the conclusion that the petitioner failed to establish that the proposed position is a profession listed in Appendix 1603.D.1 to Annex 1603.

On the Form I-290B appeal, counsel simply asserts the following:

The position offered to the beneficiary is that of Senior Vice President for Principal Investments and this position should qualify for TN status pursuant to the provisions of Title 8 Code of Federal Regulations, Part 214.6(c) since proper performance of the job duties require that the beneficiary engage in two separate business activities on a professional level, utilizing his degree in Engineering as well as his M.B.A. degree.

No additional information or evidence is submitted in support of the petitioner's appeal.

To establish eligibility under section 214(e) of the Act, the petitioner must meet certain criteria. Specifically, 8 C.F.R. § 214.6(c) requires, *inter alia*, that the petitioner demonstrate that the beneficiary will be engaged in "business activity at a professional level in one of the professions set forth in Appendix 1603.D1 to Annex 1603."

Upon review, the AAO concurs with the director's decision and affirms the denial of the petition.

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, in pertinent part:

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.

In this matter, the petitioner and its counsel failed to establish that the proffered position is one of the professions in Appendix 1603.D1 to Annex 1603 and did not explain how the director's denial based on this failure was in error. Inasmuch as counsel and the petitioner have failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding, the appeal must be summarily dismissed.

¹ Although the right to appeal the denial of a denied TN classification was eliminated in 2004, as the appeal in this matter pre-dates the change in the regulations, the AAO retains jurisdiction over this appeal. *See* 69 Fed. Reg. 11287, 11288 (Mar. 10, 2004); 69 Fed. Reg. 60939 (Oct. 13, 2004).

Even if the AAO were to accept the appeal as properly filed, it should be noted for the record that the regulations state that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

In this matter, the director specifically requested in the request for evidence (RFE) dated September 17, 2002 that the petitioner submit evidence that the proffered position "is one of the professions listed in Appendix 1603.D.1 of the North American Free Trade Agreement." In its response, the petitioner failed to specifically identify a profession listed in the appendix and instead only submitted evidence of the beneficiary's qualifications. *By itself, the failure to respond to this specific, material request in the director's RFE provided sufficient grounds to deny the petition. See* 8 C.F.R. § 103.2(b)(14).

On appeal and as indicated above, in addition to the failure to identify any specific error made by the director in this matter, the petitioner again failed to identify which profession the proffered position would fall under in the Appendix 1603.D1 to Annex 1603. The petitioner also failed to demonstrate that it had actually responded to the director's material request to identify a profession in the Appendix 1603.D1 to Annex 1603 under which the proffered position could be classified. Contrary to the apparent assertions of counsel, the TN visa classification is not a general professional visa classification; it is a limited professional visa classification with a specified list of professional occupations that are permitted under this classification. Generally claiming that the proffered position should qualify as a profession listed in 8 C.F.R. § 214.6(c) is insufficient.

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. The petitioner has not met this burden.

ORDER: The appeal is summarily dismissed.