



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **APR 16 2014**

OFFICE: VERMONT SERVICE CENTER

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be summarily dismissed.

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the Vermont Service Center. On the Form I-129 visa petition, the petitioner describes itself as an enterprise engaged in computer services that was established in 2004. In order to employ the beneficiary in what it designates as a computer programmer analyst position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation 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).

The director denied the petition, finding that the petitioner failed to establish eligibility for the benefit sought in accordance with the applicable statutory and regulatory provisions.

On February 14, 2014, the petitioner submitted a Notice of Appeal or Motion (Form I-290B). The petitioner checked Box B in Part 3(1) of the form to indicate that it was filing an appeal and that a brief and/or additional evidence would be submitted to the AAO within 30 days. Part 4 of the Form I-290B, entitled "Basis for the Appeal or Motion," provides the following instructions regarding appeals:

On a separate sheet of paper, **you must provide a statement** regarding the basis for the appeal or motion. You must include your name and A-number or USCIS ELIS Account Number on the top of each sheet.

**Appeal:** Provide a statement that specifically identifies an erroneous conclusion of law or fact in the decision being appealed.

Along with the Form I-290B, the petitioner submitted a copy of the director's decision, and a cover letter indicating that it would file additional documents within 30 days. No additional statement regarding the reason for the appeal was provided. Thereafter, the AAO received a letter from the petitioner stating that "the candidate's I-140 is approved and we pray that this beneficiary's H1b will be extended for another three years."<sup>1</sup>

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, 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 the instant case, the petitioner has

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<sup>1</sup> The regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). Amended or new petitions must be filed whenever "material changes" occur in the terms and conditions of employment or the beneficiary's eligibility as specified in the original H-1B petition. See 8 C.F.R. § 214.2(h)(2)(i)(E).

failed to identify specifically any erroneous conclusion of law or a statement of fact by the director as a basis for the appeal and, therefore, the appeal must be summarily dismissed.

**ORDER:** The appeal is summarily dismissed.