



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: NOV 19 2014 OFFICE: VERMONT SERVICE CENTER FILE: [REDACTED]

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:

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 before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a software company that was established in 1997. In order to employ the beneficiary in what it designates as a sales engineer 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 (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would pay the beneficiary the required salary for his work under the applicable statutory and regulatory provisions. The petitioner submitted a Notice of Appeal or Motion (Form I-290B) and checked Box a in Part 3 of the form to indicate that it was filing an appeal and that a brief and/or additional evidence was attached.

In the brief (letter), the petitioner stated the following:

USCIS officer has misinterpreted what we have written in the request for evidence. We clarified that we had made a mistake and that we wanted to amend the petition and state that we are offering \$78,000/year.<sup>1</sup>

As an informational purpose, we had copied/pasted the original petition letter. Obviously, if we had asked for an amendment to the petition that we were offering \$78,000/year then that was the last definitive statement.

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<sup>1</sup> The petitioner stated on the Form I-129 (pages 5 and 17) that the beneficiary would be paid \$70,000 per year for full-time employment. Further, in the letter of support dated March 30, 2014, the petitioner reported (on pages 1 and 5) that the beneficiary would be paid \$70,000 per year.

In response to the Notice of Intent to Deny (NOID) the petition, the petitioner stated that it made a mistake and requested that USCIS amend the petition. We note, however, that a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). 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* 8 C.F.R. § 103.2(b)(1); *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification for the benefit sought. *Id.*

Further, the request to amend the petition was not properly before USCIS. Rather, the petitioner must file an amended or new petition, with fee, with the service center to reflect any material changes in the terms and conditions of employment to the beneficiary's eligibility as specified in the original petition. 8 C.F.R. § 214.2(h)(2)(i)(E). The petitioner's request to alter a material term of the employment as specified in the original petition was therefore rejected by the director.

So that there is no confusion, we are re-writing the portion of the petition letter to state that we have a verbal agreement with the beneficiary that we are offering a wage of \$78,000/year.

We fully and in-detail reviewed the submission, including the Form I-290B and the petitioner's written statement. However, the petitioner failed to identify specifically any erroneous conclusion of law or statement of fact for the appeal. Rather, the petitioner acknowledges that it "made a mistake" and attempts to "amend the petition."

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

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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