



U.S. Citizenship
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Services

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FILE: EAC 04 252 53115 Office: VERMONT SERVICE CENTER Date: NOV 09 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:
[Redacted]

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center 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 a full service software development and consulting firm. The petitioner seeks to employ the beneficiary as a programmer analyst and 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 because the petitioner failed to establish that the beneficiary is qualified to serve in a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C).

On appeal, counsel submitted a Form I-290B (Notice of Appeal) without a brief or evidence and marked the box at section 2, indicating that he would send a brief and/or evidence within 30 days. The AAO received neither. Counsel has not replied to an AAO facsimile message, dated October 21, 2005, requesting counsel to submit any previously filed brief and/or evidence within 5 days.

An officer to whom an appeal is made shall summarily dismiss the appeal if the party concerned fails to specifically identify any erroneous conclusion of law or statement of fact in the original decision. 8 C.F.R. § 103.3(a)(1)(v).

The Notice of Appeal simply states the following:

The Service Center denial is arbitrary & capricious. The alien is well qualified for the offered position. A detail brief will be mailed to you within 30 days. Thank you.

Counsel fails to specify any erroneous conclusion of law or statement of fact in the director's decision. As neither the petitioner nor counsel presents additional evidence on appeal to overcome the decision, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

The burden of proof in this proceeding 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.