

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



D2

FILE: SRC 04 243 51533 Office: TEXAS SERVICE CENTER Date: NOV 18 2005

IN RE: Petitioner:
Beneficiary:



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:



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 corporation that operates a recording studio. In order to employ the beneficiary in a position that the petitioner designated music recording engineer, the petitioner 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, 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition on the basis that the petitioner had failed to establish that the proffered position meets the definition of a specialty occupation as set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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).

Counsel elected to not submit a brief or evidence on appeal, and he recorded this election by entering a check mark at the appropriate box at section 2 of the Form I-290B (Notice of Appeal). The only information that the petitioner submits about the basis of the appeal is this statement at section 3 of the Form I-290B:

Petitioner submitted sufficient evidence to show that in this instance, the offered position requires a degree or its equivalent. The employer uses the job title "sound engineer." However, the position is actually that of an associate producer.

Petitioner respectfully submits that the job duties should determine the training requirements, and not the job title alone.

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

It is also noted that the record of proceeding lacks a document that Citizenship and Immigration Service regulations require to be filed with the Form I-129 (Petition for Nonimmigrant Worker), namely, a certified Labor Condition Application (LCA) for H-1B Nonimmigrants (Form ETA 9035), certified by the Department of Labor prior to the filing of the Form I-129.¹ A petition may not be approved in the absence of a timely certified LCA.

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.

¹ The regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1) states:

Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(B)(1) states that with the petition an H-1B petitioner shall submit "[a] certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary."

SRC 04 243 51533

Page 3

ORDER: The appeal is dismissed.