



U.S. Citizenship
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FILE: SRC 05 173 50652 Office: TEXAS SERVICE CENTER Date: MAR 06 2007

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:

This is the decision of the Administrative Appeals Office in your case. All materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, 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 petition will be denied.

The petitioner is a healthcare staffing business. It seeks to employ the beneficiary as a pharmacist intern / pharmacist 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 (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on multiple grounds. The director found that the evidence of record failed to establish whether the petitioner or another corporate entity, [REDACTED] would be the beneficiary's employer or agent, which of those two entities would pay the beneficiary, and whether the two entities are the same company, as the petitioner claims. The director cited a professional staffing services agreement between [REDACTED] c. and The [REDACTED] whereby the former would provide a pharmacist intern to the latter, but found that the agreement did not constitute an itinerary of definite employment for the period of requested H-1B employment because it does not identify an address where the beneficiary would work or the dates of his employment. The director once again noted that the record did not establish that [REDACTED] and the petitioner are the same entity. The director concluded that the petitioner had failed to meet its burden of proof, under section 291 of the Act, to establish the beneficiary's eligibility for H-1B classification.

On appeal the petitioner refers to the director's request for evidence (RFE) issued on June 8, 2005 and asserts that in her decision the director stated that the petitioner had a 12-week period in which to respond to the RFE and that "[a]s of the date of this letter, this office has not received a response to the request." The petitioner states that it submitted a package of materials on August 19, 2005, which was within the 12-week response period specified in the RFE. "A copy of the entire packet" is resubmitted with the appeal, the petitioner states, "to facilitate approval of the requested H-1B petition."

The petitioner's assertion that the service center mistakenly failed to consider timely filed evidence is erroneous. The director's decision did not include the language quoted by the petitioner - "As of the date of this letter, this office has not received a response to the [RFE]." To the contrary, the director specifically acknowledged the receipt of a timely response from the petitioner by stating that "[t]he Service received the response [to the RFE] on August 22, 2005." The evidence submitted in response to the RFE was considered and discussed by the director in her decision. The materials submitted in support of the appeal are the same materials that were originally prepared in response to the RFE, though two items - the "Aegis Staffing Scheduler Roster" and the "[REDACTED] list - appear to be submitted for the first time on appeal.

The sole basis of the petitioner's appeal is the erroneous statement that the service center failed to consider the evidence submitted in response to the RFE. The director expressly stated in her decision that the petitioner's evidence had been received and considered. The regulation at 8 C.F.R. § 103.3(a)(1)(v) provides that "[a]n 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." The petitioner has not specifically identified any erroneous conclusion of law or statement of fact in the director's decision. Accordingly, the appeal will be summarily dismissed.

ORDER: The appeal is dismissed. The petition is denied.