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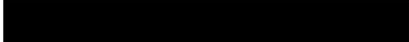
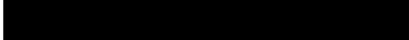
U.S. Citizenship
and Immigration
Services

PUBLIC COPY



Dr

FILE: WAC 06 238 53570 Office: CALIFORNIA SERVICE CENTER Date: **NOV 28 2007**

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:



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, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is a produce wholesaler. It seeks to extend the employment of the beneficiary as a data processing auditor. Accordingly the petitioner endeavors to classify the beneficiary as a nonimmigrant 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).

On January 29, 2007, the director denied the petition determining: (1) that the petitioner failed to file a certified Labor Condition Application (LCA) prior to filing the Form I-129 petition with Citizenship and Immigration Services (CIS); and (2) that the petitioner had not established eligibility for the visa classification at the time of filing the petition.

The record of proceeding before the AAO contains: (1) the Form I-129 filed July 21, 2006 with supporting documentation; (2) the director's October 13, 2006 request for further evidence (RFE); (3) counsel's December 14, 2006 response to the director's RFE; (4) the director's January 29, 2007 denial letter; and (5) the Form I-290B, Notice of Appeal, date stamped as received by the California Service Center on February 26, 2007. Although the Form I-290B indicates that a brief and/or additional evidence would be submitted to the AAO within 30 days, careful review of the record reveals no subsequent submission of a brief or evidence.

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's statement on the Form I-290B reads:

The default mentioned in the denial notice is technical and not intentional, also it has been cured.

Neither counsel nor the petitioner has submitted any documentary evidence or argument sufficient to overcome the director's decision in this matter. Counsel does not address the director's findings or determinations regarding the record of evidence as submitted in support of this petition. Counsel fails to specify how the director's decision included an erroneous conclusion of law or statement of fact when denying the petition. As neither the petitioner nor counsel presents additional evidence or argument on appeal sufficient 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). The petition will be denied.

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. The petition is denied.