

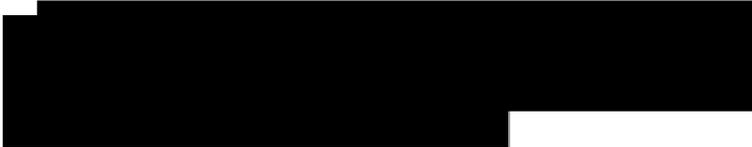
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FILE: EAC 05 129 51203 Office: VERMONT SERVICE CENTER Date: NOV 30 2007

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

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act.

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 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 computer software development and consulting firm. It seeks to employ the beneficiary as a programmer analyst, and endeavors to classify her 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).

As stated in 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. The petitioner filed the present petition seeking to amend a previously filed petition (EAC 04 220 51534), stating that the wrong beneficiary was erroneously listed in that petition. The approval notice for the petition referred to (EAC 04 220 51534) lists the beneficiary of that petition as being [REDACTED] (DOB – 11/17/1978). The petitioner states that the correct beneficiary for the referenced petition is [REDACTED] (DOB – 05/02/1982), and that [REDACTED] was named as the beneficiary in error. The director found that the petitioner was attempting to substitute a new beneficiary, not correct an error in the previous petition, and denied the petition stating that it could not be approved because it is subject to numerical cap limitations for the year 2005.

On appeal, the petitioner states that [REDACTED] (DOB – 05/02/1982) is the correct beneficiary for EAC 04 220 5534), and that [REDACTED] (DOB 11/17/1978) was named as the beneficiary in error. In support of that assertion, the petitioner states that supporting documentation for the referenced petition (Form G-28, Form I-129H, Form I-129W) and other unnamed exhibits reference the correct beneficiary [REDACTED]. The petitioner did not, however, provide copies of the referenced Form I-129 or any of the supporting documentation or related exhibits. As such, the petitioner has failed to overcome the basis of the director's denial. The petitioner has failed to identify any erroneous conclusion of law or statement of fact upon which the appeal is based. The appeal must accordingly be dismissed.

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.