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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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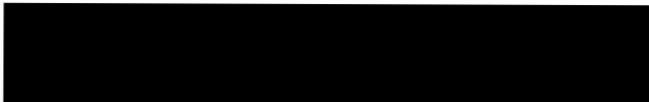
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FILE: EAC 06 152 52995 Office: VERMONT SERVICE CENTER

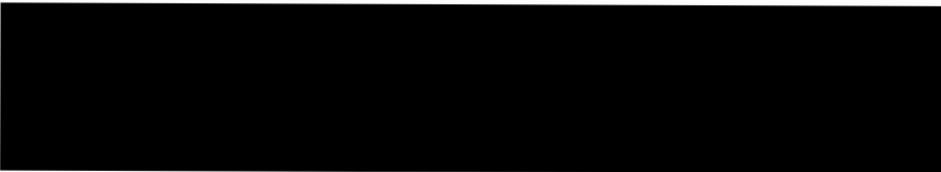
Date: JUN 29 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting 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 shall be summarily dismissed.

The petitioner is a software development and consulting services business that seeks to employ the beneficiary as a programmer analyst. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 because the petitioner has not demonstrated that the proffered position is a specialty occupation and that the beneficiary is qualified to perform services in a specialty occupation.

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).

On the I-290B, signed by counsel on January 16, 2007, counsel checked the block indicating that he would submit a brief and/or evidence to the AAO within 30 days. The AAO sent a fax to counsel on September 22, 2008, informing him that no separate brief and/or evidence was received, to confirm whether or not he had sent anything else in this matter, and as a courtesy, providing him with five days to respond. On September 22, 2008, counsel responded that he did not file a brief or evidence in support of the appeal. The record therefore is considered complete.

On the Form I-290B, 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).

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.