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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
and Immigration
Services

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FILE: EAC 06 178 53903 Office: VERMONT SERVICE CENTER Date: **SEP 14 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)

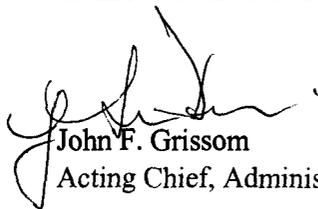
ON BEHALF OF PETITIONER:



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 nonimmigrant visa petition was denied by the service center director and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner describes itself as a software consulting and development firm that seeks to employ the beneficiary as a programmer analyst. The petitioner, therefore, 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 (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the petitioner failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation. On the Form I-290B that counsel filed on April 18, 2007, it indicated that a brief would be submitted in 30 days. When the AAO notified counsel on September 22, 2008 that no brief was included in the record, counsel responded that no brief had been submitted.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states that the AAO may summarily dismiss an appeal “when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.” Here, counsel does not address the merits of the petitioner’s claims and offers no evidence to overcome the director’s stated reasons for denying the petition. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. As the petitioner has not met his burden, the AAO summarily dismisses the appeal.¹

ORDER: The appeal is dismissed.

¹ A review of U.S. Citizenship and Immigration Services (USCIS) records indicates that, subsequent to the filing of the instant petition, the petitioner filed a new Form I-129 on April 3, 2007 on the beneficiary’s behalf. USCIS records further indicate that this petition was approved with a validity period of October 1, 2007 until September 30, 2010. Because the beneficiary in the instant petition has been approved for employment with the petitioner, further pursuit of the matter at hand is moot.