

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

D2



FILE: WAC 07 263 50639 Office: CALIFORNIA SERVICE CENTER Date: SEP 22 2009

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:



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 or reopen, 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 immigrant 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 software development company 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 on the basis of her determination that the petitioner had failed to establish: (1) that a position qualifying for classification as a specialty occupation exists; (2) that it had submitted a valid labor condition application (LCA); and (3) that it had failed to adequately explain discrepancies identified by the director.

The record of proceeding before the AAO contains the following: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

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 filed a timely appeal on April 28, 2008. In his April 25, 2008 letter, counsel set forth the director's grounds for denying the petition, listed the evidence the petitioner submitted in response to the director's request for additional evidence, stated that the director erred in denying the petition, and asserted that the record of proceeding contains sufficient evidence for the AAO to sustain the appeal and approve the petition. Counsel's statements on the Form I-1290B were nearly identical: again, he set forth the director's grounds for denying the petition, listed the evidence the petitioner submitted in response to the director's request for additional evidence, stated that the director erred in denying the petition, and asserted that the record of proceeding contains sufficient evidence for the AAO to sustain the appeal and approve the petition.

Counsel, however, failed to identify any specific erroneous conclusion of law or statement of fact for the appeal. Counsel is, in essence, asking the AAO to reconsider the evidence of record before the director at the time she made her decision. However, such a re-adjudication is inconsistent with 8 C.F.R. § 103.3(a)(1)(v). As counsel has failed to specifically identify any erroneous conclusion of law or statement of fact, or present any additional evidence not already contained in the record, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

The burden of proof in these proceedings 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 summarily dismissed.