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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

D2



FILE: WAC 09 171 51577 Office: CALIFORNIA SERVICE CENTER Date: **APR 06 2010**

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:  
[Redacted]

**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).

  
Perry Khew  
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 gas distribution business that seeks to employ the beneficiary as a system accountant. 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: 1) that the proffered position is a specialty occupation; and 2) that the petitioner is in compliance with the terms and conditions of employment.

On December 17, 2009, counsel for the petitioner submitted a Form I-290B (Notice of Appeal) without a brief or evidence. Although counsel entered a check mark at the box at section 2 of the Form I-290B which indicates that the petitioner would send a brief and/or evidence within 30 days, the AAO has received neither.

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).

The only information about the basis of the appeal is the statement, at section 3 of the Form I-290B, which reads, verbatim:

USCIS' decision to deny this I-129 Petition for Non Immigrant Worker for the visa classification of H-1B is erroneous. It's [sic] sole reason for denying the petition is that the job position in hand was alleged not to be a specialty occupation. Petitioner attests that the job position is a specialty occupation and that USCIS erred in this determination. Petitioner requests to submit brief and evidence within 30 days. This receipt was received in mail by the Petitioner and is afforded 33 days to file this notice of appeal. This notice of appeal is filed timely.

Counsel fails to specify how the director made any erroneous conclusion of law or statement of fact in denying the petition. Simply stating that the director erred in determining that the proffered position is not a specialty occupation without specifically identifying how the director erred in reading this conclusion is an insufficient basis for an appeal. As the petitioner does not present additional evidence on appeal to overcome the well-founded 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 summarily dismissed.