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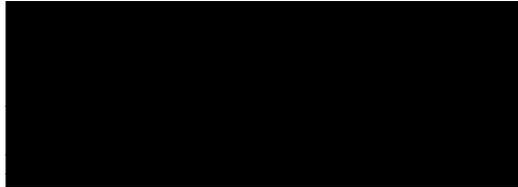
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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FILE: WAC 08 211 51940 Office: CALIFORNIA SERVICE CENTER Date:

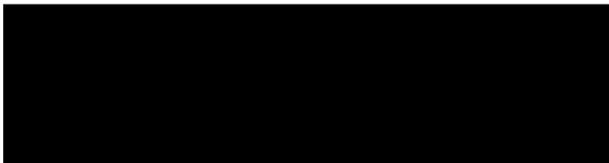
APR 30 2010

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).

Perry Rhew
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 private school that seeks to employ the beneficiary as a high school Spanish teacher. 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 qualifies for exemption to the numerical cap based on the petitioner's affiliation with an institution of higher education pursuant to section 214(g)(5)(A) of the Act, 8 U.S.C. § 1184(g)(5)(A).

On January 5, 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:

In accordance with the Request for Evidence, Petitioner submitted the required information to satisfy the finding it was CAP exempt. Petitioner in submitting the required documentation with the response to the Request for Evidence demonstrated to the Service Center by a preponderance of evidence that it is in fact an exempt Non Profit Organization as it has a relationship and affiliation with an Institution of Higher Education. Therefore, based on the foregoing the Service Center erred in denying [the beneficiary's] H1b visa petition.

Counsel fails to specify how the director made any erroneous conclusion of law or statement of fact in denying the petition.¹ Simply stating that the director erred in determining that the petitioner is not exempt from the H-1B

¹ However, even if the petitioner had made such a specification, the AAO notes that the copy of the 2008-09 Dual Enrollment Agreement between the petitioner and Cumberland University of Lebanon, Tennessee does not support the petitioner's claim that it is affiliated with an institution of higher education. Upon review, the record does not establish that the petitioner and Cumberland University are owned or controlled by the same boards or federations. Instead, the Dual Enrollment Agreement establishes only that the petitioner and Cumberland University have a cooperative agreement through which Cumberland University will provide instructors to teach at the petitioner's facilities. Thus, evidence was not provided to demonstrate that the two educational entities are associated through control by the same board or federation. Consequently, the AAO finds that the petitioner has not met the first prong of 8 C.F.R. § 214.2(h)(19)(iii)(B). Next, the petitioner has not established that it is a related or affiliated non-profit entity pursuant to the second prong of 8 C.F.R. § 214.2(h)(19)(iii)(B), operation by an institution of higher education, as the evidence in the record does not show that an institution of higher education operates the petitioner, a private religious school, within the common meaning of this term. Finally,

cap without specifically identifying how the director erred in reaching 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.

the petitioner has not established that it is a related or affiliated nonprofit entity pursuant to the third prong of 8 C.F.R. § 214.2(h)(19)(iii)(B) as there is no indication whatsoever from the evidence submitted that the petitioner is a member, branch, cooperative, or subsidiary of Cumberland University. Therefore, the petitioner does not qualify for an exemption from the H-1B cap as an institution of higher education under section 214(g)(5)(A) of the Act.