

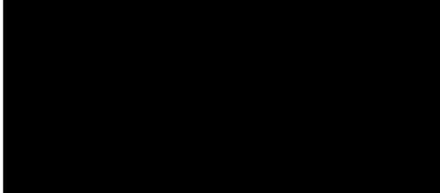
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

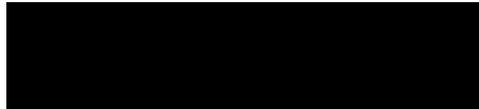
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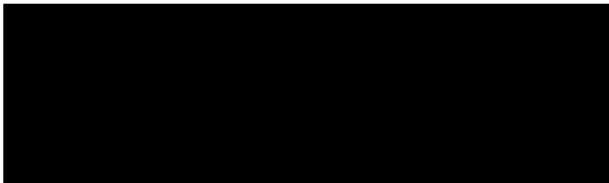
FILE: EAC 08 019 50449 Office: VERMONT SERVICE CENTER Date: **JAN 08 2010**

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed. The petition will be denied.

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner states that it is a sporting goods retailer, that it was established in 1989, that it employs 20 personnel, and that it has a gross annual income of \$1,400,000 and a net annual income of \$50,000. It seeks to extend the employment of the beneficiary as an athletic programs instructor. Accordingly, the petitioner 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).

On June 17, 2008, the director denied the petition, determining that the petitioner failed to submit a Form ETA 9035E, Labor Condition Application (LCA), certified by the Department of Labor prior to filing the Form I-129 and had failed to establish that the job offered qualifies as a specialty occupation.

Counsel submitted a timely Form I-290B, Notice of Appeal, on July 21, 2008 and indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days. As of this date, however, the AAO has not received any additional evidence into the record. Therefore, the record is complete.

On the Form I-290B, counsel asserts that as the petitioner sought an extension of the beneficiary's previously granted status, the information requested by the director in the request for evidence (RFE) was already in the file that was used for the previous approval. Counsel contends that the beneficiary is a highly acclaimed and recognized athlete and that recruiting and training athletes and coordinating programs, competitions and training activities, and dealing with other athletes qualifies as a specialty occupation. Counsel avers that the petitioner should have been given the additional time requested to respond to the director's RFE as the petitioner was responding without the benefit of counsel.

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 director in this matter specifically found that the petitioner had not submitted a certified LCA when the petition was filed and that the petitioner had not provided a certified LCA in response to the RFE. The director also found that the petitioner had not provided the detailed description of the proposed job duties requested and thus, the record did not demonstrate that the proffered position qualifies as a specialty occupation.

The AAO notes the regulation at 8 C.F.R. 214.2(h)(4)(i)(B)(1) which requires that the petitioner, before filing a petition for H-1B classification, shall obtain a certification from the Department of

Labor that it has filed an LCA in the occupational specialty for the period of employment for which it intends to employ the beneficiary. The record does not include such a certification. The AAO also notes that failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). In this matter, the petitioner did not submit the requested information in the time allotted. The AAO emphasizes that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). The record in this matter does not include evidence that the proffered position is a specialty occupation or that the petitioner otherwise complied with the regulations. The AAO notes that a beneficiary's qualifications do not establish that a position is a specialty occupation. The petitioner has not established the beneficiary's eligibility for this benefit. The AAO further notes that prior approvals do not preclude USCIS from denying an extension of the original visa based on reassessment of a petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

Neither counsel nor the petitioner identifies an erroneous conclusion of law or statement of fact in the denial of the petition. As neither the petitioner nor counsel presents additional evidence or argument on appeal sufficient 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 summarily dismissed. The petition is denied.