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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: WAC 09 136 51312 Office: CALIFORNIA SERVICE CENTER

Date: JUL 01 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:



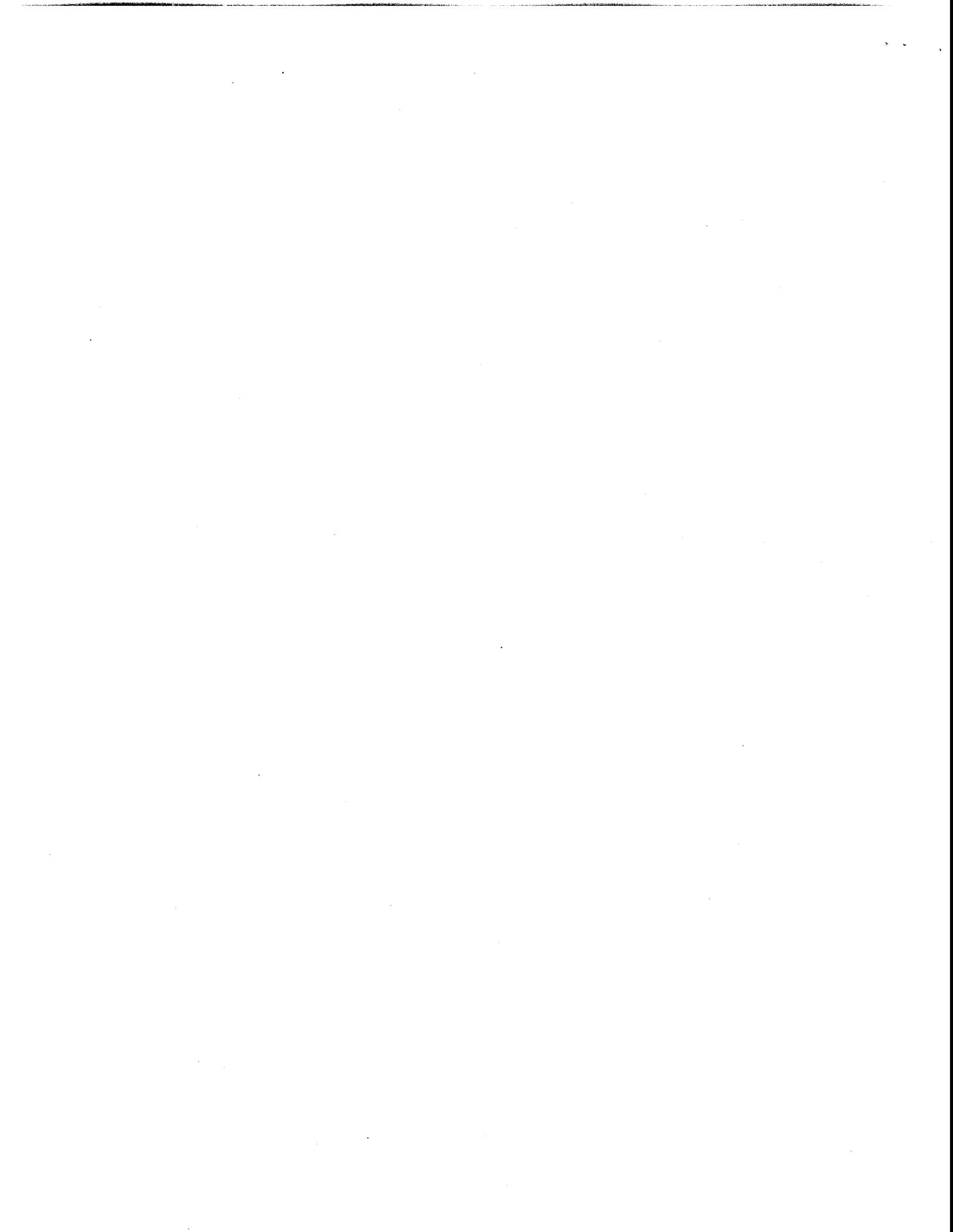
INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office



DISCUSSION: The service center director 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 petitioner is a corporation that describes its type of business as "IT development, quality, and performance maintenance solutions." To employ the beneficiary in a position that the petitioner designates as a Quality Assurance Engineer, the petitioner filed this H-1B petition 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 two independent grounds, namely, her determinations that the evidence of record failed to establish: (1) that the petitioner is qualified to file an H-1B petition, that is, as either (a) a United States employer as that term is defined at 8 C.F.R. § 214.2(h)(4)(ii), or (b) a U.S. agent, in accordance with the regulation at 8 C.F.R. § 214.2(h)(2)(i)(F); and (2) that the proffered position is a specialty occupation as that term is defined by section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and the implementing regulations at 8 C.F.R. § 214.2(h)(4).

On June 26, 2009, counsel for the petitioner submitted a Form I-290B (Notice of Appeal or Motion) without a brief or evidence. The only comment that counsel submits about the basis of the appeal is the following generalized statement at Part 3 of the Form I-290B, which broadly asserts that the director erred in law and in fact, but does not identify any specific error:

[T]he Service decision . . . contains erroneous conclusions of law and fact.

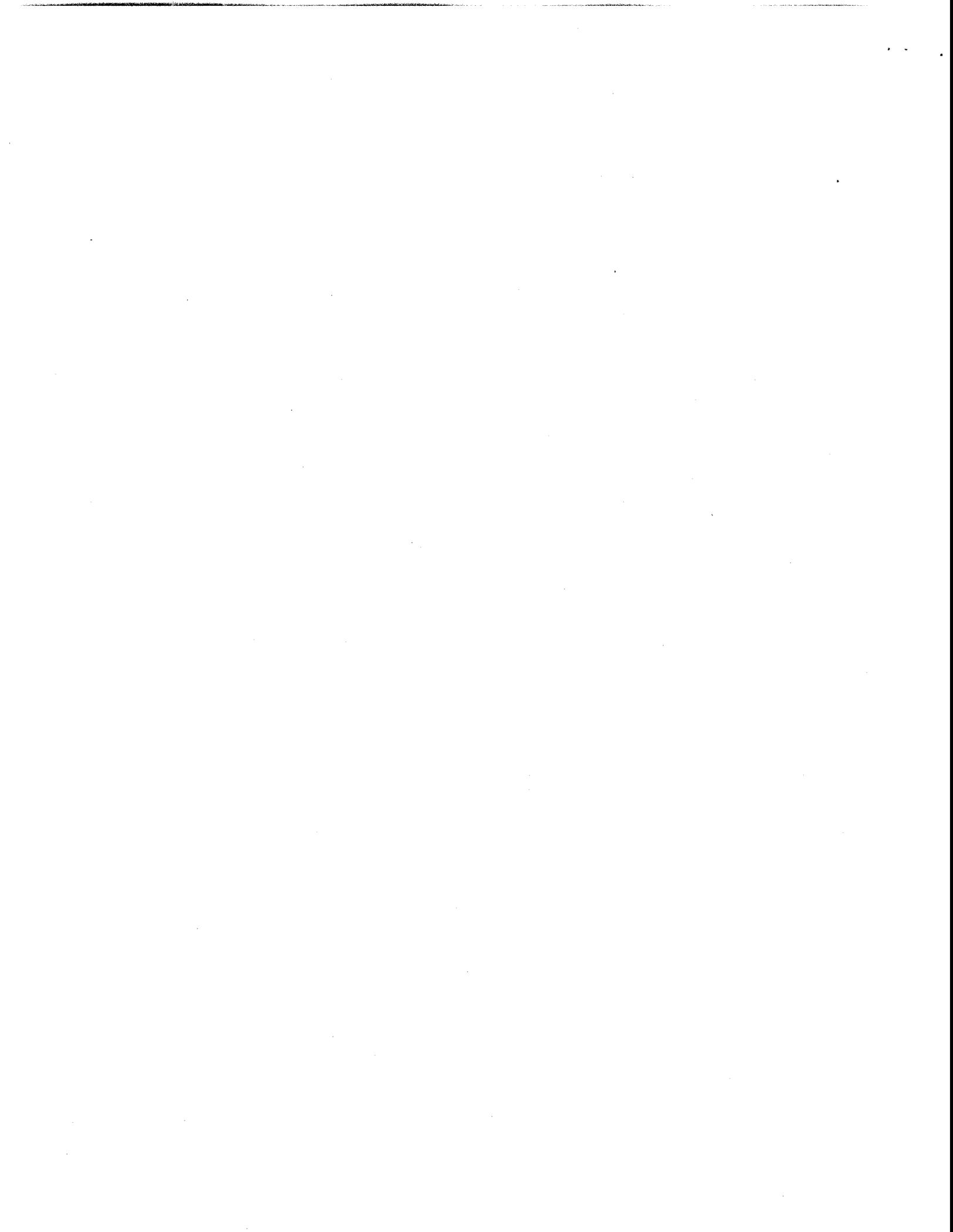
Firstly, the Service contends that the petitioner does not qualify as a United States employer despite clear evidence submitted to the contrary.

Secondly, the Service contends that the job, a quality assurance engineer, does not qualify as a specialty occupation. The petitioner submitted evidence that the job does in fact qualify as a specialty occupation.

The petitioner will submit a brief detailing its arguments and additional evidence to the AAO within 30 days.

Although counsel checked box B at section 2 of the Form I-290B, indicating that he would send a brief and/or evidence within 30 days, the AAO has received neither. Accordingly, the record of proceeding is deemed complete as currently constituted.

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 fails to specify how the director made any erroneous conclusion of law or statement of fact in denying the petition. As neither the petitioner nor counsel presents additional evidence on appeal 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.

