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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 08 148 54586

Office: VERMONT SERVICE CENTER

Date:

MAR 04 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:

SELF-REPRESENTED

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.

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 "Certified Accountant and Consultants" firm that seeks to employ the beneficiary as a physical therapy aid. 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 proffered position is a specialty occupation.

On October 16, 2008, the petitioner submitted a Form I-290B (Notice of Appeal) without a brief or evidence. Although the petitioner 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.¹

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-290-B, which reads, "WE ARE AGGRIEVED BY THE DENIAL DECISION BOTH IN FACT & LAW[.] DETAILED BRIEF FOLLOWS" and a letter from the petitioner, dated October 8, 2008, which reads:

[The petitioner] filed an I – 129 H applications [sic] in favor of [the beneficiary]. The petitioner has been denied vide [sic] the decision dated October 02, 2008. Being aggrieved by the said decision the petitioner has preferred this appeal. In this connection please find enclosed:

- (1) I-290B in two sets;
- (2) The denial notice dated 10/02/08 AND
- (3) Check for \$585.00 being the fees for the appeal.

We propose to furnish a detailed brief in support of our contentions. In order to respond to the issues raised, we need time for 90 days to complete and submit the brief to you for consideration. Please, therefore, grant the period of 90 days as requested for the same.

In view of the issues involved and reasons indicated for denial, we in the interest of justice, strongly feel the need and therefore, request an opportunity for oral arguments. . . .

As the petitioner fails to specify how the director made any erroneous conclusion of law or statement of fact in denying the petition, the appeal must be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v). Further, as the appeal must be summarily dismissed, the request for oral argument will not be considered and is hereby denied.

¹ On the Form I-290B, Part 2, Item B, the petitioner crossed out "30" and inserted "90" so that this item reads "I am filing an appeal. My brief and/or additional evidence will be submitted to the AAO within 90 days." In any event, the AAO has not received any brief and/or additional evidence, even though it has been over 16 months since the appeal was filed.

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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.