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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

[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date:

MAY 03 2010

IN RE:

Petitioner:

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 Rhew

Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the instant nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is hospice/nursing care business. In order to employ the beneficiary as a pharmacy quality control manager, the petitioner seeks 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, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director found that the petitioner had failed to establish that the beneficiary is qualified to perform the duties of the proffered position and, therefore, denied the petition. Counsel submitted a Form I-290B appeal in this matter. In the section reserved for the reason for filing the appeal, counsel inserted,

The petitioner appeals the conclusion of the Center Director that "little in the way of persuasive evidence to support this degree with a specialty occupation." [sic]

On the form appeal counsel checked Box B in Part 2 of Form I-290B to indicate that a brief or additional evidence, or both, would be submitted within 30 days. No brief or evidence was submitted to the AAO, either with the form appeal or subsequently.¹

Counsel's statement on the Form I-290B contains no specific assignment of error. Alleging, directly or indirectly, that the director erred in some unspecified way is an insufficient basis for an appeal.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part: "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."

Given the absence of a brief or additional evidence that may be considered by the AAO, counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal and, therefore, the appeal must be summarily dismissed.

ORDER: The appeal is summarily dismissed.

¹ It is noted that, although the record indicates that counsel to the petitioner submitted a letter on or about December 3, 2009, the correspondence was sent to the Vermont Service Center. However, the regulations at 8 C.F.R. § 103.3(a)(2)(viii) and the instructions to Form I-290B require the affected party to submit the separately filed brief or evidence directly to the AAO, not to the Vermont Service Center. Because the affected party did not follow the regulations or the instructions incorporated therein, the AAO was not in possession of the letter or brief and therefore will not consider it on appeal.