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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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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

NOV 03 2010

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:

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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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 non-profit enterprise engaged in middle school and high school education as a charter school. In order to newly employ the beneficiary as a teacher, the petitioner seeks to classify him 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 annual fiscal-year cap on the issuance of H-1B visas, set by section 214(g)(1)(A) of the Act, 8 U.S.C. § 1184(g)(1)(A), had already been reached by the time the petition was filed.<sup>1</sup> However, the petition was accepted and adjudicated because the petitioner indicated on the Form I-129 (Petition for Nonimmigrant Worker) that the beneficiary meets the cap-exemption criterion at section 214(g)(5)(A) of the Act, 8 U.S.C. § 1184(g)(5)(A), as a beneficiary who, in the words of the Act, “is employed (or has received an offer of employment) at an institution of higher education (as defined in section 1001(a) of Title 20) or a related or affiliated nonprofit entity.”<sup>2</sup>

The director denied the petition on the ground that the petitioner had not established that it fit the cap-exempt employer category indicated in the Form I-129.

On April 22, 2010, the petitioner’s counsel submitted a Form I-290B (Notice of Appeal or Motion), without a brief or evidence. The only comment about the basis of the appeal is the following generalized assertion at Part 3 of the Form I-290B:

The beneficiary . . . will be obtaining employment in a non-profit school, [namely, the petitioner.] [The petitioner] obtains federal public charter school startup grants through the California Department of Education. Therefore, [the petitioner] is not subject to the cap. We will be submitting a brief forthwith.

The petitioner’s counsel checked box B at section 2 of the Form I-290B, indicating that the petitioner would send a brief and/or evidence within 30 days. However, the AAO has received neither a brief nor any type of documentation supplementing the Form I-290B. Accordingly, the record of proceeding is deemed complete as currently constituted.<sup>3</sup>

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<sup>1</sup> The record of proceeding reflects that the annual H-1B cap for the pertinent fiscal year (FY 2010) was reached on December 21, 2009, and that the instant H-1B petition was filed on February 18, 2010.

<sup>2</sup> The petitioner asserted this exemption by checking the “Yes” box at question 1 of Part C of the Form I-129 H-1B Data Collection Supplement, which asks, “Are you an institution of higher education as defined in the Higher Education Act of 1965, section 101(a), 20 U.S.C. section 1001(a)?”

<sup>3</sup> The AAO notes not only that counsel submits no statutory or regulatory basis for its declaration of cap exemption based upon the petitioner’s receipt of federal charter school funds, but also that counsel’s comments do not address the specific grounds upon which the petition was denied.

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 petitioner's 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.