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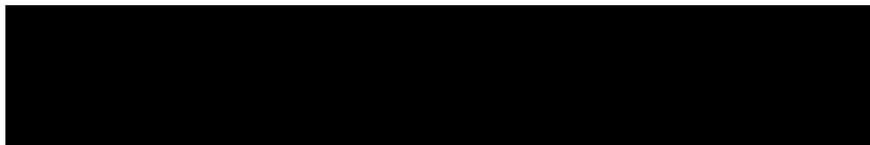
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER

Date: OCT 04 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 approval of this 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 limited liability company doing business as a hotel. To employ the beneficiary in a position that the petitioner designates as Training and Development Specialist, the petitioner endeavors to classify her 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 December 1, 2009, the service center director denied the petition, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation.

On December 30, 2010, the petitioner submitted a Form I-290B (Notice of Appeal or Motion). The petitioner checked box B at section 2 of the Form I-290B, indicating that the petitioner elected to file an appeal rather than a motion.

Before forwarding this matter to the AAO, the service center director issued another decision, on January 19, 2010, which states, erroneously, that the petitioner had filed the instant matter as “a Motion to Reopen or Reconsider to [sic] the adverse decision,” and, also inconsistently, that the petitioner had filed the instant matter as an appeal, but not within the time allotted by regulation. The director’s January 19, 2010 decision dismissed the motion, without notification of a right to appeal that particular adverse decision. The AAO withdraws the January 19, 2010 decision by the director, as it does not accord with the facts in this matter, and as it is not authorized by regulation.¹ Additionally, the AAO specifically finds that, contrary to language in the director’s decision dismissing the “motion,” the appeal was timely filed.

The petitioner submitted the Form I-290B without a brief or evidence. The only comment that counsel makes about the appeal is the following statement at Part 3 of the Form I-290B:

¹ The director’s action also violated procedural rules governing the treatment of a timely filed appeal. It should be noted that U.S. Citizenship and Immigration Services (USCIS) regulations (1) require that every timely filed H-1B appeal be reviewed at the service center level before it is forwarded to the AAO, and (2) also authorize the service center director to reopen the proceeding to issue a *favorable* decision if the mandatory review of the appeal warrants such action. However, the regulations do not authorize a service center director to treat an appeal as a motion just to memorialize, by its subsequent dismissal, that the appeal has been reviewed but was not found to warrant favorable action. See the regulations at 8 C.F.R. § 103.3(2), and in particular the provision at 8 C.F.R. § 103.3(2)(iv), which states:

Forwarding appeal to [AAO]. If the reviewing official will not be taking favorable action or decides favorable action is not warranted, that official shall promptly forward the appeal and related record of proceeding to the [AAO].

The offered position of Training & Development Specialist is a specialty occupation pursuant to sec. 101(a)(15)(H)(i)(B) of the [Act].

Although the petitioner 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, 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).

The petitioner fails to specify how the director made any erroneous conclusion of law or statement of fact in denying the petition. As the petitioner 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.