

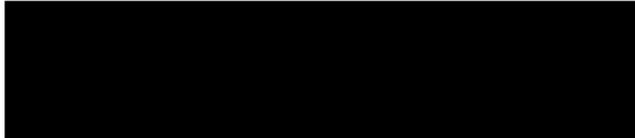
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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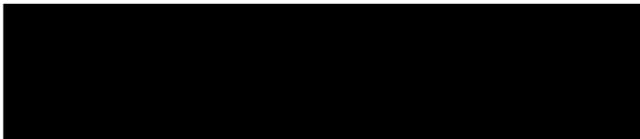
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Date: DEC 01 2011

Office: CALIFORNIA SERVICE CENTER

File: 

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:



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 \$630. 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,


for Perry Rhew
Chief, Administrative Appeals Office

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

Seeking to employ the beneficiary in what it designates as a senior bio market engineer position, the petitioner filed this H-1B petition in an endeavor 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).

The director found the *initial evidence insufficient to establish eligibility for the benefit sought*, and issued a request for evidence (RFE) on September 8, 2009. The director requested additional information pertaining to the proffered position and documentation to *substantiate the bona fides of the petitioning entity*, including the petitioner's 2008 Federal Income Tax Return, business license(s), photographs of the business premises, and a complete "notarized" lease agreement.¹

In response to the RFE, the petitioner indicated that the 2008 Federal Income Tax Return and business license were "not available" but failed to provide any further information. The petitioner did not provide any information regarding its failure to submit photos of the business premises. In regard to the lease agreement, the petitioner indicated that it was "not available because the owner has ownership of the business premises."

The director denied the petition on December 9, 2009, finding that the petitioner failed to provide the requested evidence, which precluded a material line of inquiry. Furthermore, the director noted that there were discrepancies in the petitioner's submissions that were not satisfactorily explained. The director provided a detailed analysis and specifically cited the deficiencies in the evidence in the course of the denial.

On appeal, the petitioner submits a brief and additional evidence, including the documentation that was previously requested by the director through the RFE. However, the AAO finds that neither the Form I-290B nor the brief and other submissions on appeal specifically identify any errors on the part of the director.

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).

Based upon the following findings combined, the AAO concludes that the appeal must be summarily dismissed. First, the clear basis of the director's decision to deny the petition was the rule, stated at 8 C.F.R. § 103.2(b)(11), that failure to submit evidence requested in an RFE constitutes grounds for denial of the petition if that failure precludes a material line of inquiry. Second, on appeal, the petitioner failed to contest that the evidence requested but not provided

¹ The RFE indicated that if the petitioner did not lease its business premises, it should provide an explanation and submit evidence.

precluded a material line of inquiry.

In this regard the AAO notes, in particular, that, with regard to the RFE-requested lease agreement and photographs of the business premises, the petitioner merely blames an unidentified non-attorney for failing to provide the requested copies. Also, the petitioner should note that the regulations governing the RFE process, at 8 C.F.R. §§ 103.2(b)(8) through 103.2(b)(14), preclude consideration of evidence requested by, but not submitted within the time allotted by, an RFE.

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 no 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.