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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**



D2

Date: **DEC 27 2011** Office: VERMONT 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, 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 software development and consulting company that seeks to employ the beneficiary as a programmer analyst. 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, finding that the petitioner had failed to demonstrate that it was a qualifying United States employer.

The petitioner submitted a timely Form I-290B on August 24, 2011 and indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days.¹ As of this date, however, the AAO has not received any additional evidence into the record. Therefore, the record is considered complete as currently constituted.

The director provided a detailed analysis and specifically cited the deficiencies in the evidence in the course of the denial. The petitioner's statement on Form I-290B, which simply states, "Brief and additional supporting documents would be submitted to the USCIS within 30 days," does not specifically identify any errors on the part of the director and is therefore insufficient to overcome the conclusions the director reached based on the evidence submitted by the petitioner.

The AAO notes that the Form I-290B was accompanied by supporting documentation. However, a review of this documentation indicates that all of this evidence was previously submitted in support of the petition prior to adjudication. Moreover, this documentation contains no new evidence, such as a letter or a brief from the petitioner outlining the basis for the petitioner's appeal.

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. The petitioner makes no claim on the Form I-290B that the director's denial of the petition on the ground cited above constituted erroneous conclusions of law or statements of fact.

¹ Although the Form I-290B was filed by the petitioner, the office notes that according to a previously-filed entry of appearance, [REDACTED] represents the petitioner. Since no withdrawal of counsel's appearance on behalf of the petitioner is in the record, the office will presume that counsel is still representing the interests of the petitioner in this matter, and will therefore forward notice of the decision on appeal to both counsel and the petitioner. See 8 C.F.R. § 292.5(a).

As the petitioner fails to present 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.