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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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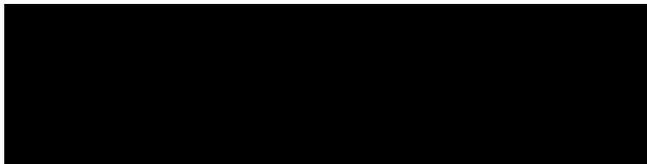


Date: **DEC 28 2011** Office: CALIFORNIA SERVICE CENTER File:

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,

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 submitted a Petition for Nonimmigrant Worker (Form I-129) to the Vermont Service Center on September 28, 2009. The petitioner indicated on the Form I-129 petition that it is a mortgage loan and real estate buy and sell company.

Seeking to continue to employ the beneficiary, 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 denied the petition on January 6, 2010, finding that the petitioner failed to demonstrate that there is a reasonable and credible offer of employment.

On February 3, 2010, counsel for the petitioner submitted a Form I-290B (Notice of Appeal or Motion). On March 3, 2010, counsel submitted a brief and additional evidence. In the brief, counsel argues that the proffered position is a specialty occupation. However, the director did not deny the petition based on the petitioner's failure to demonstrate that the proffered position is a specialty occupation. As indicated, the director denied the instant petition based on a bona fide offer of employment issue. In the brief, counsel does not specifically demonstrate how the director erred in concluding that the petitioner failed to demonstrate that there was a reasonable and credible offer of employment.

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 does not 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).

Further, the AAO notes that the director did not err in denying the petition for failure to establish a reasonable and credible offer of employment. In the petition signed on September 24, 2009, the petitioner indicates that the beneficiary's proffered salary is \$50,960.00 and that the petition is a continuation of previously approved employment without change with the same employer. However, according to the beneficiary's 2008 W-2 Wage and Tax Statement, she earned a total of \$30,808.00 in 2008, and the 2007 W-2 Wage and Tax Statement indicates that she earned a total of \$18,202.00 in 2007. In addition, according to U.S. Citizenship and Immigration Services (USCIS) records, the beneficiary's salary for the prior H-1B was \$43,742.00, which was approved from October 1, 2006 to September 30, 2009. Therefore, based on these discrepancies and the petitioner's failure to abide by the

wage requirements with respect to the beneficiary's initial H-1B petition, it has failed to demonstrate that there is a reasonable and credible offer of employment.

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.