

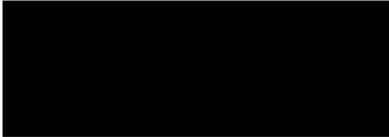
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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W. MS 2090
Washington, DC 20529-2090



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: SELF-REPRESENTED

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 of the California Service Center denied the nonimmigrant visa petition and dismissed a subsequently-filed motion to reconsider.¹ The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner claims to be a wholesale trade company that seeks to extend the employment of the beneficiary as a market research analyst.² Thus, the petitioner endeavors to extend the beneficiary's employment 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 March 5, 2009, the director denied the petition, finding that the beneficiary was not eligible for an extension of stay in H-1B nonimmigrant status under the American Competitiveness in the Twenty-First Century Act (AC21), as amended by the 21st Century Department of Justice Appropriations Authorization Act (DOJ21), because a final decision was made on the Form I-140 immigrant petition for alien worker on behalf of the beneficiary.

On April 6, 2009, the beneficiary filed a motion to reconsider and asserted that contrary to the director's findings, the beneficiary is entitled to an extension beyond the six year limitation since a Form ETA 9089 application for permanent employment certification on behalf of the beneficiary has been pending with the U.S. Department of Labor for over 365 days.

The director dismissed the motion on July 20, 2009, finding that the petitioner had failed to satisfy the regulatory requirements for a motion to reconsider. Specifically, the director concluded that the petitioner did not: (1) state the reasons for reconsideration and support those reasons with any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

On August 17, 2009, the petitioner filed an appeal without a brief or evidence. The only comment that the petitioner submits about the appeal is the following statement at Part 3 of the Form I-290B:

See attached[.] Petition can be extended for one (1) year due to the fact that 365 days has [sic] passed since the filing of a [I]abor [c]ertification (PERM) E[T][A] 9089. AC21 Section 106(a)(1)[.] Documents in support: [p]rint out from DOL web

¹ In the director's decision of July 20, 2009, the director addressed the motion in part as a motion to reopen or reconsider. However, the AAO notes that the petitioner checked box E at section 2 of the Form I-290B, indicating that the petitioner is filing a motion to reconsider a decision and that the brief is attached. Therefore, it should only have been referred to as a motion to reconsider. That said, this error is harmless as the director properly addressed the requirements for a motion to reconsider and explained why the petitioner failed to meet those requirements.

² The AAO notes that pursuant to a site visit conducted at the address given for the petitioner, it was found that the petitioner did not exist or no longer existed.

page and email received from DOL confirming reception of case as of October 4, 2007.

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 dismissing the motion. 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).

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.