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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

[redacted]

Date: DEC 2 8 2011 Office: VERMONT SERVICE CENTER File: [redacted]

IN RE: Petitioner: [redacted]
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 for
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 November 23, 2010. The petitioner indicated on the Form I-129 petition that it is a software development, training, and consulting services company.

Seeking to continue to employ the beneficiary in what it designates as a software quality assurance engineer and tester position, the petitioner filed this H-1B petition in an endeavor to classify him 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 July 5, 2011, finding that the petitioner did not satisfy the itinerary requirement and failed to establish that the proffered position qualifies as a specialty occupation.

On July 12, 2011, the petitioner submitted a Form I-290B (Notice of Appeal or Motion), 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:

> The Service Center's decision is arbitrary and capricious. Petitioner has indeed established an employer-employee relationship. An itinerary clearly states that the beneficiary currently working for the [v]endor/client[,] [redacted].][,] in house [p]roject. Proffered position does qualify as a specialty occupation.

Here, the petitioner mentions an employer-employee relationship was established. However, the director did not deny the petition based on the lack of an employer-employee relationship. As indicated, the director denied the instant petition based on itinerary and specialty occupation issues. On the Form I-290B, the petitioner does not specifically demonstrate how the director erred in concluding that the petitioner failed to provide the requisite itinerary of the beneficiary's services. In addition, the petitioner fails to specifically identify how the director erred in concluding that the proffered position does not qualify as a specialty occupation.

Although the petitioner checked box B at section 2 of the Form I-290B, indicating that it 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 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).[1]

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.

[1] It is further noted that, even if the appeal were not summarily dismissed, it would have been dismissed as moot, as the beneficiary in this matter was subsequently approved for H-1B status with another employer.