

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

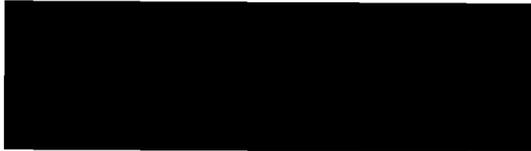
PUBLIC COPY

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



FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 02 2011

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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,

Michael J. Kelly
Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner is a computer software and engineering services provider that seeks to employ the beneficiary as a computer systems 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 on July 29, 2009, finding that the petitioner had failed to: (1) demonstrate that the beneficiary was qualified to perform the duties of a specialty occupation; and (2) submit material evidence as requested by the director in a request for evidence (RFE) dated April 30, 2009. Specifically, the director found that the petitioner had failed to demonstrate that the beneficiary's bachelor's degree in pharmacology qualified him to perform the duties of a computer systems analyst.

On appeal, the petitioner submits Form I-290B along with the following brief statements:

- 1) I would like to draw the attention to the Fact that the Beneficiary has an equivalent Bachelor's degree in Pharmacy from an Accredited University in the United States, she also has a Post Graduate Diploma in Computer Applications.
- 2) [The petitioner] is developing an Online Medical BackOffice Software that has a module that provides the Pharmacy Interconnect which requires a person with the background of [the beneficiary] in order to Provide Services to its Clients, the Beneficiary will be working on the development of the foundation for such services.
- 3) I am enclosing one of the Documents that we had mistakenly not been [sic] included at the time of RFE reply.

A review of the document submitted on appeal demonstrates that these documents include W-2 forms for the petitioner's employees for the years 2007 and 2008.

In this matter, the director provided a detailed analysis of the record and specifically cited the deficiencies in the evidence in the course of the denial. Notably, the director discussed the petitioner's failure to submit sufficient evidence to demonstrate that the beneficiary, by virtue of his undergraduate degree in pharmacy and subsequent diploma in computer applications, qualified her to perform the duties of a computer systems analyst. The director's seven-page RFE issued on April 30, 2009 requested specific and detailed information pertaining to the qualifications, such as evidence demonstrating that the beneficiary had expertise in the field of computer systems. Despite requesting specific evidence which would demonstrate either a nexus between the proffered position and the beneficiary's qualifications or recognized expertise of the beneficiary in the field, the petitioner failed to submit such evidence.

On appeal, the petitioner simply restates the beneficiary's educational background, and asserts that the petitioner's [REDACTED] requires a person with the beneficiary's background. The petitioner makes no attempt and provides no evidence to demonstrate how or why the beneficiary's background in pharmacy qualifies her as a computer systems analyst, or why her credentials are so essential for the operation of the petitioner's software system. The petitioner makes no claim that the director erred in either fact or law, and fails to address this issue on appeal. Therefore, the petitioner has failed to specifically identify what part of the director's analysis was incorrect and the reason(s) why it was incorrect. Filing an appeal, without identifying any specific errors in the analysis of the director is insufficient. In other words, the petitioner's general statements on the Form I-290B, without specifically identifying any errors on the part of the director, are simply insufficient to overcome the well-founded and logical conclusions the director reached based on the evidence or lack of evidence submitted by the petitioner.

Moreover, it is noted that the director also denied the petition based on the petitioner's failure to submit requested material evidence. Specifically, the director requested evidence pertaining to the petitioner's employees, and asked the petitioner to submit documentation in table format which outlined the petitioner's past and present hiring practices for H-1B employees, as well as payroll records and W-2 forms. On appeal, the petitioner submits copies of W-2 forms for 2007 and 2008, yet fails to address the director's specific query, which requested evidence regarding the number and status of the petitioner's H-1B employees and filing practices related thereto. The petitioner is advised that, according to the regulations, the purpose of the request for evidence was to elicit further information that clarified whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (b)(12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The petitioner was asked to provide evidence such as the newly-submitted W-2 forms in the request for evidence. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Further, the regulations at 8 C.F.R. §§ 103.2(b)(8), (b)(11), and (b)(12) preclude the AAO from considering on appeal evidence that was requested in, but was not submitted in response to, an RFE. If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal. It should be noted, however, that even if the W-2 forms were accepted on appeal, the petitioner still failed to fully address the director's request. Submitting simply the W-2 forms, without the accompanying H-1B information requested by the director, would not have been sufficient to overcome the director's basis for the denial in this matter.

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 discussed above, it is the responsibility of the petitioner to establish eligibility in this matter.

As the petitioner presents no additional evidence on appeal to overcome the well-founded decision of the director, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

As stated above, 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.