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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

[redacted]

D2

Date: JUL 25 2011 Office: CALIFORNIA 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:

[redacted]

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,

for Michael T. Kelly
Perry Rhew
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California 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 home health agency that seeks to employ the beneficiary as a health education manager. 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 beneficiary was not qualified to perform the duties of a specialty occupation position.

Counsel for the petitioner submitted a timely Form I-290B on September 17, 2010 and indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days. On October 8, 2010, counsel for the petitioner submitted additional documentary evidence in support of the appeal. However, no brief addressing the basis for the director's denial was submitted.

The director provided a detailed analysis and specifically cited the deficiencies in the evidence in the course of the denial. Although submission of a brief is not required, counsel's statement on Form I-290B 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. Specifically, counsel contends that:

1. The only reason for the denial is USCIS did not accept the beneficiary's evaluation from FIS.

2. Although all experience letters and certifications from Microsoft were sent to USCIS, but they did not evaluate and make a decision that beneficiary has more than required education and experience in computer field.

3. Experience letters were detailed and very long describing all aspects of the job.

4. We are getting evaluation through new agency and will be provided within 30 days.

On appeal, counsel submits an Evaluation of Academic Credentials prepared by [redacted] an Evaluation of Academics and Experience prepared by [redacted] of [redacted] for Design, and an [redacted] prepared by Professor [redacted] of the Department of [redacted] University. However, these documents will not be considered.

The petitioner is required to submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence (RFE) is to elicit further information that clarifies 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 (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).

In the RFE issued on June 17, 2010, the director specifically requested evaluations of the beneficiary's education, training and work experience in order to establish that he was qualified to perform the duties of a specialty occupation. Moreover, the director provided a detailed overview regarding the types of evaluations USCIS will accept as evidence under the regulatory requirements. 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 USCIS regulations governing the RFE process preclude the consideration of evidence requested in an RFE but not submitted as part of a timely response to the RFE. *See* 8 C.F.R. §§ 103.2(b)(11) and (b)(14). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's RFE. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the evidence submitted on appeal.

The director determined that the evidence submitted by the petitioner both in support of the petition and in response to the RFE was insufficient to establish the beneficiary's eligibility to perform services in a specialty occupation as required by 8 C.F.R. § 214.2(h)(4)(iii)(C), and the director specifically cited the reasons that the submitted evidence was insufficient. On appeal, however, counsel fails to address the basis for the director's denial, and does not specifically identify any errors on the part of the director. Instead, counsel submits three new evaluations in an effort to establish eligibility in this matter, and fails to specifically note any erroneous conclusion of law or fact on the part of the director. The AAO observes, parenthetically, that, even if these evaluations had been timely submitted – and they were not, as explained above – they would have no probative value. Close reading of the content of those evaluations reveals that none of them establish that they were authored by "an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience," as required by the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

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). Counsel fails to specify how the director made any erroneous conclusion of law or statement of fact in denying the petition. As neither the petitioner nor counsel presents 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.