

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: **APR 03 2012**

Office: VERMONT 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

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

On the Form I-129 visa petition, the petitioner stated that it is a "Retail" firm. In order to employ the beneficiary in what it designates as a accountant position, the petitioner seeks 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, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner had failed to establish that it would employ the beneficiary in a specialty occupation.

Counsel submitted a Form I-290B appeal in this matter. In the section reserved for the reason for filing the appeal, counsel inserted:

Vermont Service Center denial of H-1B status for [the beneficiary] is without merits, arbitrary and capricious and against the applicable laws and regulations. Beneficiary was perviously qualified by the USCIS to perform those functions based on her education and experience. Now Beneficiary has additional three years experience as an accountant with U.S. Company. Therefore, she is well qualified for the position.

[Verbatim from the original.]

Counsel also checked Box B in Part 2 of Form I-290B to indicate that a brief or additional evidence, or both, would be submitted to the AAO within 30 days. However, to date, neither has been received into evidence. Accordingly, the record of proceeding is deemed closed.

The AAO reiterates that the basis for the denial of the visa petition is the petitioner's failure to demonstrate that it would employ the beneficiary in a specialty occupation position. On appeal, however, counsel's argument is directed at the issue of the beneficiary's qualifications to hold the proffered position. The issue of the beneficiary's qualifications is separate and distinct from the issue of whether the proffered position qualifies as a position in a specialty occupation. As such, counsel did not address the basis for the decision of denial.

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



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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.