



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



D2

Date: **APR 04 2012** 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 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 California Service Center on April 5, 2011. The petitioner indicated on the Form I-129 that it is a software development, consulting, and training services company.

Seeking to employ the beneficiary in what it designates as a computer programmer 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 June 16, 2011, finding that the petitioner failed to establish that it has an employer-employee relationship with the beneficiary and 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 duties of the preferred [sic] position for the beneficiary requires a specialty occupation and has significant work for the requested period of employment.

The petitioner JCG is not a token employer but actually contracts the work of the beneficiary. JCG assigns the tasks to the beneficiary which is reported back by the beneficiary of their status on a weekly basis, based on which a performance report is also generated by the petitioner on a quarterly basis.

Thank you.

Here, the petitioner does not specifically demonstrate how the director erred in concluding that the petitioner failed to establish that it has an employer-employee relationship with the beneficiary. 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).

Page 3

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).

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.