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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

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Date: **JAN 05 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 nonimmigrant visa petition was initially approved by the Director, California Service Center. In connection with the beneficiary's nonimmigrant visa interview at the United States Consulate General in Dubai, the director served the petitioner with notice of intent to revoke the approval of the petition (NOIR). The director ultimately revoked the approval of the nonimmigrant petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner states that it is a convenience store-supermarket with 24 employees. It seeks to employ the beneficiary as a network administrator. 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 revoked the approval of the petition on November 18, 2009, because the record indicates that since the NOIR was issued, the director did not receive any communication concerning this matter.

The petitioner filed an appeal, checking the box indicating that a "brief and/or additional evidence will be submitted to the AAO within 30 days."

On December 18, 2009, a Form I-290B, Notice of Appeal or Motion, was timely filed by an attorney. The record contains a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative signed by the petitioner's authorized official, [REDACTED] and attorney [REDACTED]. However, the State Bar of California records show that [REDACTED] is not eligible to practice law in the State of California since April 18, 2011 to the present. See <http://members.calbar.ca.gov/fal/Member/Detail/181372> (last accessed on December 20, 2011). While [REDACTED] is currently ineligible to practice law, he represented the petitioner in this proceeding and filed the instant appeal while in good standing. Therefore, although the appeal will not be rejected, the AAO cannot currently recognize [REDACTED] representation of the petitioner in the instant appeal proceeding, and will consider the petitioner as being self-represented.

On the Form I-290B, the petitioner checked the box indicating that the petitioner is filing an appeal and a "brief and/or additional evidence will be submitted to the AAO within 30 days." In support of the appeal, the petitioner merely states that "[t]he beneficiary's statements during his interview in Dubai, UAE, were the result of a misunderstanding. The beneficiary does possess the requisite training and experience necessary to perform the duties of the proffered position. The brief that will follow will detail the misunderstanding and the experience of the beneficiary."

The appeal was filed on December 18, 2009. On January 22, 2010, the AAO received a brief dated January 19, 2010 and signed by [REDACTED]. The instructions on the Form I-290B requires that the petitioner submit a brief within 30 days. However, the instant brief was submitted 35 days after the appeal was filed. While the regulation allows the AAO to permit the affected party additional time to submit the brief upon a written request from the affected party, the petitioner did not submit such a written request. 8 C.F.R. § 103.3(a)(2)(vii). Furthermore, the record does not contain any

explanation from the petitioner or then counsel as to why the brief was not submitted within 30 days as requested.

Furthermore, comparing the signatures in the record, the signature of [REDACTED] on the brief is so visibly different from his signatures on other forms in the record of proceeding that it is concluded that the signature on the brief is not from the attorney, [REDACTED] himself. No evidence suggests that the brief was submitted by then counsel for the petitioner. Without a valid signature from the Form G-28 attorney, the AAO cannot find that a brief was timely and properly submitted in support of the instant appeal.

Under United States Citizenship and Immigration Services (USCIS) regulations, the approval of an H-1B petition may be revoked on notice under five specific circumstances. 8 C.F.R. § 214.2(h)(11)(iii)(A). To properly revoke the approval of a petition, the director must issue a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(h)(11)(iii)(B).

In the present matter, the director provided a detailed statement of the grounds for revocation and the time period allowed for the petitioner's rebuttal. The director also cited to the specific provision of the regulations as a basis for the revocation. Upon review, the AAO finds that the director properly issued a NOIR pursuant to USCIS regulations.

However, the petitioner failed to respond the director's NOIR and therefore, failed to rebut the grounds for the revocation stated in the NOIR. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for revoking the approval of the petition. *Cf.* 8 C.F.R. § 103.2(b)(14). The petitioner failed to rebut the grounds of revocation by submitting its response to the director's NOIR, and therefore, the AAO finds that the director also properly revoked the approval of the petition.

On appeal, the petitioner did not identify specifically an erroneous conclusion of law or a statement of fact in the director's revocation, but implicitly admitted the beneficiary's error by stating that the beneficiary's statements during his interview in Dubai, UAE, were the result of a misunderstanding. The petitioner even did not state whether it responded to the director's NOIR, and if not, why the response was not submitted. The regulation at 8 C.F.R. § 103.3(a)(1)(v) states that the AAO "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." An error by the petitioner or the beneficiary is not a proper basis for an appeal. Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact by the director in this proceeding, the appeal must be summarily dismissed.

Furthermore, it is noted that the petitioner also submitted some documents on appeal as evidence to establish the beneficiary's qualifications for the proffered position, including a certificate of employment dated March 30, 2007 from [REDACTED] with its English translation and the beneficiary's certificates of excellence for various training courses. The experience letter from the beneficiary's former employer is already in the record and has been

considered by the director in the proceeding. It does not provide any new fact in considering the beneficiary's qualifications. However, those training course certificates are presented for the first time in this proceeding. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the approval of the visa petition was revoked. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

The appellant has not specifically identified any erroneous conclusion of law or statement of fact in the director's revocation of the approval of the petition. Therefore, the appeal must be summarily dismissed.

ORDER: The appeal is summarily dismissed.