



U.S. Citizenship
and Immigration
Services

Administrative Appeals Office
U.S. Citizenship and Immigration Services
Evaluation of personal papers
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Date: **JUN 11 2012** Office: CALIFORNIA SERVICE CENTER



IN RE: 

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 Director of the California Service Center denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner claims to be a restaurant with 114 employees and a gross annual income of \$6,815,520.70. It filed the instant petition seeking to employ the beneficiary as a financial manager under SOC code 11-3031.02 with the title senior manager, budget, operations and development and 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). Finding the position as described to be that of a food service manager, SOC code 11-9051.00, the director denied the petition on the grounds that the petitioner failed to establish that the proffered position qualifies for classification as a specialty occupation.

On January 3, 2010, the petitioner submitted a Form I-290B (Notice of Appeal or Motion), along with a brief. In the brief, the petitioner states, "Although we originally petitioned the position as a Senior Manager, his actual duties are more similar to those of what the Occupational Outlook Handbook classifies as a Management Analyst." It does not allege, however, that the director erred in finding the position as originally described to be a food service manager and, as a consequence of that classification, does not qualify as a specialty occupation. Instead, the petitioner states that it understands that the classification of a specialty occupation as defined by the Act must meet one of four criteria and, then, proceeds to address three of the four criteria. The petitioner concludes that it is requesting that the beneficiary "may be reconsidered to file his nonimmigrant visa petition." Again, the petitioner does not specifically demonstrate how the director erred in concluding that the proffered position does not qualify as a specialty occupation.

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).¹

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.

¹ Even if the appeal were not summarily dismissed, the petitioner's request to reclassify the position to that of a management analyst, SOC code 13-1111.00, is not a proper basis for appeal. Such a request must instead be made pursuant to a new or amended petition. *See* 8 C.F.R. § 214(h)(2)(i)(E). This is further evident when considering that such a reclassification of the position would leave the petition without a Labor Condition Application certified for that new classification on or before the date the instant petition was filed.