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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: Office: VERMONT SERVICE CENTER

FILE:

IN RE: **MAR 19 2012**
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 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 revoked approval of 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 an electrical and general contractor. In order to employ the beneficiary in what it designates as a project engineer 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).

On November 17, 2009, the director issued a notice of intent to revoke the approval of the instant H-1B petition (NOIR). Failing to receive a response to the NOIR within the permitted time period, the director revoked approval of the petition on February 1, 2010 on the basis that the petitioner had failed to establish that the beneficiary is qualified to perform the duties of the proffered position.

Counsel submitted a Form I-290B appeal in this matter. The body of that appeal reads, in its entirety:

On February 1, 2010, we received a letter stating that, on November[]17, 2009, [USCIS] notified us of its intent to revoke the [instant visa petition].

The letter further stated that, USCIS has not received a response to that notice. Therefore, the grounds of revocation have not been overcome and the approval of the petition is revoked. However, we are unable to locate this notice of intent.

On November 1, 2009, our office moved to a new location which leads us to believe that the notice may have been lost in the mail, therefore, respectfully request a copy of the notice forwarded so that we may be able to respond.

Counsel 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. No brief or evidence was submitted to the AAO, either with the Form I-290B appeal or subsequently.

Counsel's statement on appeal contains no specific assignment of error. The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part: "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."

Here, there is no claim by the petitioner or its counsel that the director erred in mailing the NOIR or the subsequent revocation notice to the address of record. As such, counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal and, therefore, the appeal must be summarily dismissed.

The AAO notes, however, that the record as presently constituted fails to show that the beneficiary is qualified to work in any specialty occupation position. That is, the beneficiary's qualifications are predicated on an evaluation based in part on his employment experience, but the record contains no

evidence that the evaluator 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. The record also lacks evidence that the beneficiary has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty. *See* 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and (D)(1). As such, since evidence was not presented that the beneficiary has at least a U.S. bachelor's degree in any specific specialty, or its equivalent, the approval of this petition violated paragraph (h) of 8 C.F.R. § 214.2 and involved gross error. Consequently, it appears the director did not err in revoking the approval of the petition on this basis. *See* 8 C.F.R. § 214.2(h)(11)(iii)(A)(5).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. §1361. Here, that burden has not been met. The appeal will be dismissed and the petition denied.

ORDER: The appeal is summarily dismissed.