

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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**

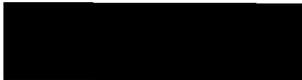


D2

Date: **MAY 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)

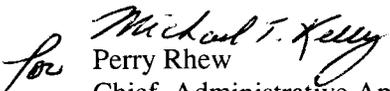
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be summarily dismissed.

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the Vermont Service Center on April 30, 2007. The petitioner described itself on the Form I-129 as an enterprise engaged in software development and consulting with 22 employees.

In order to employ the beneficiary in what it designates as a computer programmer 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 on December 21, 2007, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On January 22, 2008, the petitioner submitted a Notice of Appeal or Motion (Form I-290B) with a document it entitled "Written Statement in [S]upport of Appeal." The petitioner indicated in its written statement that it was filing a notice of appeal to the AAO. The AAO reviewed the record in its entirety.

In its written statement, the petitioner claimed that it had made several errors on the Form I-129 petition and Labor Condition Application (LCA) when they were initially submitted to USCIS. More specifically, the petitioner claimed that it made a clerical mistake on the LCA with regard to the job location. The petitioner also stated that it was an H-1B dependent employer but that it had incorrectly indicated that it was not an H-1B dependent employer on the Form I-129 petition and LCA. The petitioner provided a list of inaccuracies and requested that the AAO make changes to the Form I-129 petition, including a change to the offered salary, in an "effort to correct" the petitioner's errors.¹ The petitioner further apologized for misinterpreting the director's request for evidence and provided a new LCA, Work Order and Contract.

The AAO fully and in-detail reviewed the Form I-290B and the petitioner's written statement. However, the petitioner failed to identify any 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."

¹ The request by the petitioner for the AAO to make changes to the petition must be rejected. It has been concluded by the agency that the only available evidence of a petitioner's intent is the petition itself, e.g., the Form I-129 and the evidence submitted in support of the petition. A petitioner may of course change a material term and condition of employment. However, such a change cannot be made to a petition after it has already been filed with USCIS. Instead, the change must be documented through the filing of an amended or new petition. See 8 C.F.R. § 214.2(h)(2)(i)(E). Thus, if the petitioner wishes for USCIS to consider the requested changes to the petition, it should file an amended or new petition with the appropriate fees, LCA and supporting documentation.

The petitioner has failed to identify an erroneous conclusion of law or a statement of fact as a basis for the appeal and, therefore, the appeal must be summarily dismissed.

ORDER: The appeal is summarily dismissed.