



U.S. Citizenship
and Immigration
Services

B2

[REDACTED]

DATE: **NOV 09 2012** OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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)

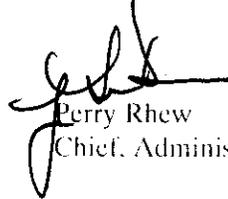
ON BEHALF OF PETITIONER:
[REDACTED]

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 in accordance with the instructions on 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, California Service Center, (“the director”) denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed. The petition will remain denied.

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the California Service Center on January 11, 2011. The petitioner stated on the Form I-129 that it provides restaurant, food and hospitality services and was established in 2009. The petitioner stated that it has 25 employees and a gross annual income of \$1,500,000 and a net annual income of \$300,000. The petitioner seeks to employ the beneficiary as its vice-president 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).

The director denied the petition determining that the petitioner had not established that the proffered position is a specialty occupation. The record of proceeding before the AAO contains: (1) Form I-129, Petition for a Nonimmigrant Worker, and supporting documentation; (2) the director’s request for evidence (RFE); (3) the petitioner’s response to the RFE; (4) the notice of decision; (5) Form I-290B, Notice of Appeal or Motion, with counsel’s brief and re-submitted documentation; (6) the director’s motion decision; and (7) Form I-290B and counsel’s letter brief and previously submitted documentation.

Counsel for the petitioner provides the same letter¹ on appeal that was submitted in response to the director’s RFE and again resubmits documentation already in the record. 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).

The record on appeal does not resolve the deficiencies in the record noted by the director.² The petitioner does not identify an erroneous conclusion of law or statement of fact in the director’s denial. As the petitioner does not present additional evidence or argument on appeal sufficient 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. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The petitioner has not sustained that burden.

ORDER: The appeal is summarily dismissed. The petition remains denied.

¹ Counsel’s letter submitted on appeal has minor changes to the March 3, 2011 letter submitted in response to the director’s RFE. However, in all other material respects, the letter is the same.

² In addition, we observe that even if the petitioner overcame the basis for the director’s denial of the petition (which it has not), the petition must still be denied as the Form I-129 was not properly signed by the petitioner; more specifically, the Form I-129 (page 7) contains a signature block that is devoid of any signature from the petitioning employer. See 8 C.F.R. § 103.2(a) and (b). The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).