**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

(b)(6)

**U.S. Citizenship and Immigration Services**

DATE: APR 03 2013 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

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,

M Bailey
for Ron Rosenberg
Acting 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 the Form I-129 visa petition, the petitioner describes itself as a technology and professional service business established in 2008. In order to employ the beneficiary in what it designates as a database developer position, the petitioner seeks to classify her 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, finding that the petitioner failed to establish that it will be a "United States employer" having an "employer-employee relationship" in accordance with the applicable statutory and regulatory provisions.

On September 25, 2012, the petitioner submitted a Notice of Appeal or Motion (Form I-290B) and checked Box A in Part 2 of the form to indicate that it was filing an appeal and that a brief and/or additional evidence was attached. The AAO fully and in-detail reviewed the Form I-290B and the petitioner's written statement in support of the appeal. On the Form I-290B, Part 3, and accompanying letter, the petitioner quotes a portion of the director's decision: "[T]he totality of evidence provided does not demonstrate a valid employer-employee relationship will exist for the duration of the requested H-1B validity period." The petitioner then states that additional evidence is attached to the Notice of Appeal.[1] The petitioner further reports that a favorable decision of the petition would be greatly appreciated. The petitioner did not identify any errors in the director's decision.

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." In the instant case, the petitioner has failed to identify an erroneous conclusion of law or a statement of fact by United States Citizenship and Immigration Services (USCIS) as a basis for the appeal and, therefore, the appeal must be summarily dismissed.

**ORDER:** The appeal is summarily dismissed.

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[1] With the appeal, the petitioner submitted a revised job description and a contract agreement dated August 31, 2012. However, the AAO notes that the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification for the benefit sought. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Id.* A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).