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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

DATE: **AUG 26 2013** OFFICE: VERMONT 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 THE PETITIONER:
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the 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 describes itself as a restaurant established in 2003. In order to employ the beneficiary in what it designates as a budget analyst position, the petitioner seeks 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 on November 20, 2012, 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 December 21, 2012, counsel for the petitioner submitted a Notice of Appeal or Motion (Form I-290B) and checked Box C in Part 2 of the form to indicate that she was filing an appeal and that no supplemental brief and/or additional evidence will be submitted. Accordingly, the record of proceeding is deemed complete as currently constituted.

The only comment that counsel submits about the appeal is the following statement at Part 3 of the Form I-290B:

Petitioner hereby requests Appeal to the Board of Immigration Appeals, pursuant to 8 C.F.R. 103.3.

Petitioner asserts that the position of Budget Analyst as described in the original petition filing and in the response to request for evidence of 6/13/2012, does in fact qualify as a specialty occupation per 8 C.F.R. 214.2(h)(4)(iii)(A), in that it meets the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Petitioner submits as evidence at Exhibit 1 original I-129 filing of 11/1/2011, and Exhibit 2 response to request for evidence dated 6/13/20102.

The AAO fully and in-detail reviewed the submission, including the Form I-290B and counsel's written statement. However, counsel 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." In the instant case, the petitioner and counsel have 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.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is summarily dismissed.