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

(b)(6)

DATE: JAN 2 8 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:

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,

for Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director revoked 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 1, 2010. The petition was approved on May 4, 2010 for what was designated as a physical therapist position. However, upon subsequent review of the record of proceeding, the director issued a Notice of Intent to Revoke (NOIR), finding that the petitioner "has not established that a valid employer-employee relationship will exist for the duration of the requested H-1B validity period" and that "it does not appear the beneficiary qualifies for employment as a physical therapist."

USCIS may revoke the approval of an H-1B petition pursuant to 8 C.F.R. § 214.2(h)(11)(iii), which states the following:

> (A) Grounds for revocation. The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:
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> *(1)* The beneficiary is no longer employed by the petitioner in the capacity specified in the petition, or if the beneficiary is no longer receiving training as specified in the petition; or
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> *(2)* The statement of facts contained in the petition was not true and correct, inaccurate, fraudulent, or misrepresented a material fact; or
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> *(3)* The petitioner violated terms and conditions of the approved petition; or
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> *(4)* The petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section; or
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> *(5)* The approval of the petition violated paragraph (h) of this section or involved gross error.
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> (B) Notice and decision. The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If the petition is revoked in part, the remainder of the petition shall remain approved and a revised approval notice shall be sent to the petitioner with the revocation notice.

Upon review of the record, the AAO finds that the NOIR placed the petitioner on notice that revocation of the approval of the petition was contemplated and the director offered the petitioner an opportunity to submit additional evidence or arguments for consideration. The director specified

that the petitioner had 33 days to submit evidence in rebuttal of the NOIR.[1] Moreover, the petitioner was notified that if a response was not received within the allotted time period, a final decision would be made based on the evidence currently in the record of proceeding.

In the instant case, the NOIR was issued on March 21, 2011. The petitioner did not submit a response to the NOIR within the requested 33 day timeframe or anytime afterwards. On August 12, 2011 (approximately five months after the issuance of the NOIR), the director revoked the approval of the petition.

On September 12, 2011, counsel submitted a Notice of Appeal or Motion (Form I-290B). In Part 3 of the Form I-290B, counsel provided a list of documents being submitted, which counsel noted were requested in the NOIR. The petitioner did not provide a valid reason for failing to respond to the NOIR with the documentation.[2]

The AAO reviewed the entire record of proceeding and finds that the petitioner and 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 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.

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[1] The petitioner was afforded 30 days, plus three days for service by mail, to submit evidence in rebuttal of the NOIR. *See* 8 C.F.R. § 103.8(b).

[2] Moreover, even assuming *arguendo* that the petitioner and counsel had identified a specific assignment of error, the AAO would not accept the evidence offered by counsel for the first time on appeal. That is, in the instant case, the petitioner was put on notice that revocation of the approval of the petition was contemplated and given a reasonable opportunity to respond before the director made a final decision. The petitioner failed to timely respond to the NOIR by submitting additional evidence or arguments for consideration and now attempts to submit some of the documentation on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the evidence to be considered, it should have timely responded to the NOIR with the documentation.