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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

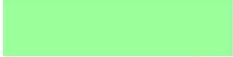


U.S. Citizenship
and Immigration
Services

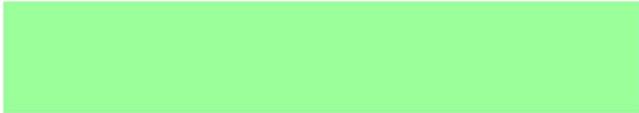


DATE: JUL 19 2013

OFFICE: VERMONT SERVICE CENTER

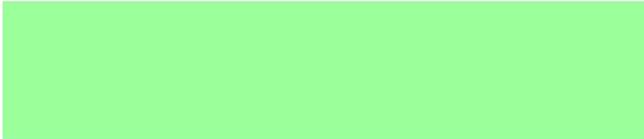
FILE: 

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:

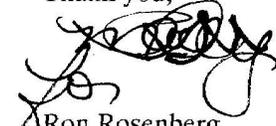


INSTRUCTIONS:

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,


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 school system established in 1980. In order to employ the beneficiary in what it designates as a lead teacher 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 on August 29, 2011, 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 October 3, 2011, counsel submitted a Notice of Appeal or Motion (Form I-290B) and checked Box A in Part 2 of the form to indicate that the petitioner 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 counsel's written statement in support of the appeal. The AAO notes that there is no text in the box for Part 3 of the Form I-290B, which states "Provide a statement explaining any erroneous conclusion of law or fact in the decision being appealed." In an accompanying letter, counsel states that the petition was denied by the service center and indicates that he is providing additional evidence.¹ Specifically, counsel indicates that he has enclosed "a more detailed job description"²; "petitions filed for other

¹ The AAO notes that the director issued a request for evidence (RFE) on March 23, 2011, requesting that the petitioner submit further evidence to establish that the proffered position qualifies as a specialty occupation. The regulations indicate that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary in the adjudication of the petition. See 8 C.F.R. §§ 103.2(b)(8); 214.2(h)(9)(i). The purpose of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. § 103.2(b)(1), (8), and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

² With the appeal, counsel submitted a revised description of the proffered position. The AAO notes that counsel has not specified the source of the revised description, and further notes that the petitioner has not signed or endorsed this position description. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Further, the AAO notes that the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition.

applicants for the position of Lead teacher"; "Labor Condition Applications from other schools"; and "an excerpt from the Department of Labor's Bureau of Labor Statistics wherein it states that the route to becoming a public school teacher involves completing a bachelor's degree from a teacher education program and then obtaining a license."³ Counsel indicates that he hopes "the foregoing statements and enclosed documentation provide sufficient proof that [the proffered position] qualifies as a specialty occupation, and that [the beneficiary] is qualified for the benefit sought," and requests that the director's decision be reversed. However, counsel does 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 the director as a basis for the appeal and, therefore, the appeal must be summarily dismissed.

ORDER: The appeal is summarily dismissed.

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).

³ The AAO notes that the record does not indicate that the petitioner is a public school.