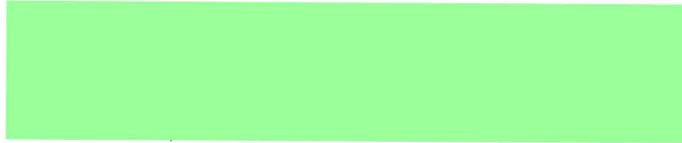




U.S. Citizenship
and Immigration
Services

(b)(6)

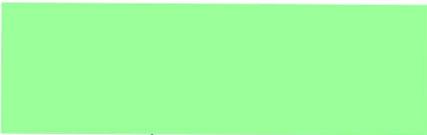


DATE: **MAY 31 2013** OFFICE: VERMONT SERVICE CENTER FILE:

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 THE 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 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 fresh fruit importer established in 2006. In order to employ the beneficiary in what it designates as an accountant 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 (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on October 19, 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 November 21, 2012, counsel for the petitioner submitted a Notice of Appeal or Motion (Form I-290B) and checked Box B in Part 2 of the form to indicate that he was filing an appeal and would send a brief and/or additional evidence within 30 days. Although counsel stated that he would send a brief and/or evidence, the AAO has not received the submission. 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:

The Director found that the job offered does not qualify as a specialty occupation under § 101(a)(15)(H)(i)(B) of the Act and the factors in 8 CFR 214.2(h)(4)(ii)(A). The Director held that "the nature of your company is not such that it would require true accountant. Based on the additional description of job duties submitted it appears that the beneficiary will be performing the duties of a bookkeeper..." as defined in the OOH. Petitioner is a small but rapidly growing organization with a complex binational [sic] structure in a vertically integrated enterprise that produces a variety of tropical fruits and vegetables in Mexico, which it harvests, packs [sic], imports, repacks, and markets to national distributors and food store chains in the United States. Petitioner desires 30 days to show the dramatic growth in volume and product expansion and to provide other additional evidence in support of its contention that the duties are not the routine duties described in the OOH for Bookkeeping, Accounting, and Auditing Clerks and that this unique company requires a trained professional accountant to handle the accounting functions of this binational [sic] company.

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. Moreover, 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). An offer to provide further information in the future is an insufficient basis for an appeal.¹ The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part:

¹ The AAO observes that no additional evidence has been received from the petitioner. The AAO nonetheless notes that the petitioner must establish eligibility at the time of filing the nonimmigrant visa

"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.

The burden of proof in this proceeding rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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

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).