



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **AUG 28 2014** 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 (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, and the matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be summarily dismissed. The petition will be denied.

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a 15-employee "Software, IT Consulting and Development" firm established in 2011. In order to employ the beneficiary in what it designates as a "Business 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, finding that the petitioner failed to comply with the requirement at 8 C.F.R. § 214.2(h)(4)(i)(B)(I). The petitioner, through its counsel, submitted a timely Form I-290B, Notice of Appeal or Motion, on November 25, 2013, and indicated that a brief and/or additional evidence was attached. Therefore, the record is considered complete as currently constituted.

The director provided a detailed analysis and specifically cited the deficiencies in the evidence in the course of the denial. On appeal, counsel states the following on the Form I-290B:

[T]he Beneficiary's project ended prematurely through no fault of his own. The Beneficiary was originally confirmed to work on a project at [REDACTED] the end-client location disclosed in the certified [Labor Condition Application (LCA)] submitted with the original petition, but due to budget cuts, the project never got off the ground. The Petitioner had no other choice but to file another LCA for a new end-client project and submit the certified LCA with the new end-client location in response to the Request for Evidence.<sup>1</sup> Based on the foregoing, we respectfully request that the Service reverse its decision of denial and approve the petition filed on behalf of [the beneficiary].

Counsel's statement does not specifically identify any errors on the part of the director and is therefore insufficient to overcome the conclusions the director reached based on the evidence submitted by the petitioner.

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. 8 C.F.R. § 103.3(a)(1)(v). Counsel fails to specify how the director made any

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<sup>1</sup> A change in the place of employment of a beneficiary to a geographical area requiring a corresponding LCA be certified to the U.S. Department of Homeland Security with respect to that beneficiary may affect eligibility for H-1B status and is, therefore, a material change for purposes of 8 C.F.R. § 214.2(h)(2)(i)(E) and (11)(i)(A). When there is a material change in the terms and conditions of employment, the petitioner must file an amended or new H-1B petition, with fee, with the corresponding LCA. 8 C.F.R. § 214.2(h)(2)(i)(E).

erroneous conclusion of law or statement of fact in denying the petition. Therefore, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

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. The petition is denied.