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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



**JUL 08 2015**

DATE:

PETITION RECEIPT #: 

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, 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 a Nonimmigrant Worker (Form I-129) to the Vermont Service Center on April 1, 2014. In order to employ the beneficiary in what it designates as an IT Consultant (ERP), 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 evidence does not demonstrate that a valid employer-employee relationship exists for the duration of the requested H-1B validity period.

On October 8, 2014, the petitioner submitted the Form I-290B (Notice of Appeal or Motion). On the Form I-290B, Part 3, the petitioner checked Box 1b, to indicate that a brief and/or additional evidence will be submitted within 30 calendar days of filing the appeal. However, we never received the brief and/or additional evidence in support of the appeal. Thus, the record is complete as currently constituted.

With the Form I-290B, the petitioner submitted an addendum that states the following:

The employer has been asked to demonstrate that the job duties qualify the position as a specialty occupation by demonstrating with a preponderance of the evidence that the position meets one of the four criteria articulated in 8 C.F.R. 214.2(h)(4)(iii)(A). With the materials and explanations in the record and submitted with this appeal, we believe that the employer has demonstrated by clear and convincing evidence that it meets at least one of the four criteria. We believe that the USCIS has erroneously denied the petition. Hence, the denial should be reversed. The petition is approvable and should be approved.

We find that the petitioner did not identify specifically how the director made any erroneous conclusion of law or statement of fact in denying the petition.<sup>1</sup> 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." 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.

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<sup>1</sup> As noted, the petition is denied on the basis of the petitioner's employer-employee relationship with the beneficiary.

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*NON-PRECEDENT DECISION*

**ORDER:** The appeal is summarily dismissed.