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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: EAC 06 125 52880 Office: VERMONT SERVICE CENTER Date: JAN 25 2008

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act.

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is a provider of engineering, computer and marketing software services. It seeks to employ the beneficiary as a software marketing engineer, and endeavors 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 because the beneficiary had reached the maximum period in H-1B status in the United States.

As stated in 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. The director denied the petition because the beneficiary had been in H-1B status for the maximum six-year period allowable under applicable law.

On appeal, the petitioner states that the beneficiary “had to interrupt his services in the U.S. and leave because of the sudden demise of his brother, and therefore, we are seeking this request.” The petitioner offers no other basis for the appeal and did not identify any erroneous conclusion of law or statement of fact upon which the appeal is based. The petitioner seeks an extension of the beneficiary’s status in the United States, indicating that the beneficiary is currently in the United States. The petitioner did not submit evidence of the beneficiary’s departure from the United States or otherwise establish that the beneficiary has not spent the maximum allowable period of six years in the United States in H-1B status. The appellant must do more than simply file an appeal. It must clearly demonstrate the basis for the appeal. This, the appellant has failed to do. As such, the appeal must be 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 dismissed.