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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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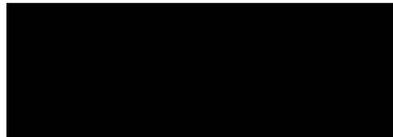


FILE: WAC 08 800 13397 Office: CALIFORNIA SERVICE CENTER Date: SEP 29 2009

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

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii)(a) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(iii)(a)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom,
Acting Chief, Administrative Appeals Office

DISCUSSION: The 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 horse training/sales stable that seeks to employ the beneficiary as a horse trainer pursuant to section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(H)(ii)(a) for the period from October 1, 2008 to September 30, 2010.

The record of proceeding before the AAO contains the electronic filing of the Form I-129. The director denied the petition on November 24, 2008, on the ground that the petitioner failed to submit initial evidence and supporting documentation. The director noted that without any supporting documentation, the United States Citizenship and Immigration Services (USCIS) is “unable to determine whether the petition and the proposed training are bona fide and that the beneficiary and petitioner are eligible for the requested immigration benefit.”

The petitioner submitted the Form I-290B on December 24, 2008. On the Form I-290B, counsel for the petitioner stated that he contacted the national customer service center when the application was filed and was “told not to send anything until it was requested.” Counsel for the petitioner submits a three-page letter with an explanation of the training program.

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).

As noted above, counsel for the petitioner indicated that he was informed by an agent from the national customer service hotline not to send any supporting documentation with the e-filing of the Form I-129, and to provide the supporting documentation only upon the request of the director. Counsel for the petitioner fails to identify any erroneous conclusion of law or statement of fact for the appeal. In reviewing the instructions for e-filing the Form I-129 on the USCIS website, www.uscis.gov, it states “the required initial evidence must be received by the Service Center within seven business days of e-Filing the Form. If you do not submit the required initial evidence in the requisite time period, you will not establish a basis for eligibility, and we may deny your petition or application.” The director was correct in denying the petition and counsel failed to indicate an erroneous conclusion of law.

Counsel for the petitioner states that he did not receive any communication from USCIS until the final decision. The regulation at 8 C.F.R. § 103.2(b)(8) clearly states that a petition shall be denied “[i]f there is evidence of ineligibility in the record.” The regulation does not state that the evidence of ineligibility must be irrefutable. Where evidence of record indicates that a basic element of eligibility has not been met, it is appropriate for the director to deny the petition without a request for evidence. If the petitioner has rebuttal evidence, the administrative process provides for a motion to reopen, motion to reconsider, or an appeal as a forum for that new evidence. In the present case, the evidence indicated that the petitioner did not establish eligibility for an H-2A classification on behalf of the beneficiary. Accordingly, the denial was appropriate, even though the petitioner might have had evidence or argument to rebut the finding.

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As no additional evidence is presented on appeal to overcome the decision of the director, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

The burden of proof in these proceedings 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.