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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

b4

[redacted]

DATE: JUN 20 2011 OFFICE: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiaries:

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
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 general construction contractor that seeks to employ the beneficiary as a cement mason pursuant to section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(H)(ii)(b), for the period from November 1, 2010 until October 31, 2011.

On February 24, 2011, the director denied the petition concluding that the petitioner did not establish a temporary need for the beneficiary's services. The director also noted several inconsistencies in the petition that question whether the petitioner established that there is actual employment for the beneficiary.

On March 7, 2011, the petitioner submitted the Form I-290B to appeal the denial of the underlying petition. The petitioner marked the box at part one of the Form I-290B to indicate that the brief and/or additional evidence is attached with the Form I-290B. Thus, the AAO deems the record complete as currently constituted.

On appeal, the petitioner submits a copy of the certified temporary labor certification and noted that the original was previously submitted; the beneficiary's resume and prior work certification; and a copy of the Form I-129 that was previously submitted. Thus, the petitioner did not provide any evidence to address the director's concerns in its denial decision. Instead, the petitioner resubmits documentation that was previously submitted. The only new evidence is the beneficiary's resume; however, this does not overcome the director's denial.

As noted by the director in the denial decision, the petitioner did not submit sufficient evidence to establish it has an intermittent need for a temporary worker. In fact, the petitioner's statement of need stated that it has two projects with [redacted] Base; however, the petitioner did not provide any contracts or evidence to support this claim. In addition, the petitioner stated that it is "planning to submit bids for any available highway construction projects." Thus, the petitioner's mission is to receive more contracts and thus, the need for additional workers is not temporary but instead is the nature of the petitioner's permanent operations. On appeal, the petitioner did not submit any evidence to overcome the director's concerns.

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).

In regards to the director's conclusion that the petitioner failed to submit sufficient evidence to show the petitioner's need for the services or labor is an intermittent need, the petitioner fails to identify any erroneous conclusion of law or statement of fact for the appeal. 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.