



U.S. Citizenship
and Immigration
Services

Identifying data deleted
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



D3

FILE: EAC 08 222 51998 Office: VERMONT SERVICE CENTER Date:

NOV 25 2009

IN RE: Petitioner: [Redacted]
Beneficiaries: [Redacted]

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

ON BEHALF OF THE 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, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will summarily dismiss the appeal.

The petitioner seeks designation of its program as an international cultural exchange program and classification of the beneficiary as an international cultural exchange visitor pursuant to the provisions of section 101(a)(15)(Q)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(Q)(i). The petitioner, a public school district located in Ridgefield, Connecticut, seeks to employ the beneficiary as full-time secondary school teacher for a period of nine months.

The director denied the petition, concluding that the petitioner's program was not a qualifying international cultural exchange program pursuant to section 101(a)(15)(Q)(i) of the Act and the provisions at 8 C.F.R. § 214.2(q)(3). In denying the petition, the director found that the petitioner did not establish that it operates an international cultural exchange program that is accessible to the public, and did not provide the requested historical documentation relating to the claimed existing exchange program.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the director "misinterpreted section 101(a)(15)(Q) of the Immigration and Nationality Act to the facts presented in the I-129 petition." Counsel indicated on the Form I-290B, Notice of Appeal, that he would submit a brief and/or additional evidence to the AAO within 30 days. The appeal was filed on November 13, 2009. As of this date, the AAO has received no brief or additional evidence from counsel.¹ Accordingly, the record of proceeding will be considered complete.

¹ On March 9, 2009, the director received additional correspondence from new counsel retained by the beneficiary, who requested that USCIS update its records to indicate that he is the new attorney of record. Counsel's letter is accompanied by a Form G-28, Notice of Entry of Appearance as Attorney or Representative, identifying the beneficiary as the sole represented party.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the appeal within 30 days after service of the unfavorable decision. The affected party may request additional time to submit a brief, pursuant to 8 C.F.R. § 103.3(a)(2)(vi) The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) states:

Meaning of affected party. For purposes of this section and sections 103.4 and 103.5 of this part, *affected party* means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition.

U.S. Citizenship and Immigration Services (USCIS) regulations specifically prohibit a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing a petition; the beneficiary of a visa petition is not a recognized party in a proceeding. 8 C.F.R. § 103.2(a)(3). Therefore, although the appeal was properly filed by the petitioner's counsel, neither the beneficiary nor her attorney are recognized parties in

Section 101(a)(15)(Q)(i) of the Immigration and Nationality Act defines a nonimmigrant in this classification as:

an alien having a residence in a foreign country which he has no intention of abandoning who is coming temporarily (for a period not to exceed 15 months) to the United States as a participant in an international cultural exchange program approved by the Attorney General for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the country of the alien's nationality and who will be employed under the same wages and working conditions as domestic workers.

Regulations at 8 C.F.R. § 103.3(a)(1)(v) state, 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.

On appeal, counsel for the petitioner does not identify with any specificity an erroneous statement of fact or conclusion of law on the part of the director. Counsel's general objections to the denial of the petition, without specifically identifying any errors on the part of the director, are simply insufficient to overcome the well-founded conclusions the director reached based on the evidence submitted by the petitioner. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Accordingly, the appeal will be summarily dismissed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in support of the appeal, the petitioner has not sustained that burden.

ORDER: The appeal is summarily dismissed.

this proceeding, and the late-filed supplemental evidence submitted by the beneficiary's counsel in support of the appeal will not be considered.