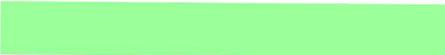


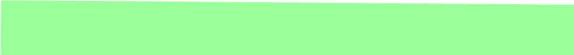


U.S. Citizenship
and Immigration
Services

(b)(6)

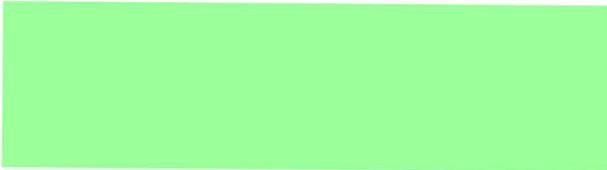


DATE: **MAR 25 2014** Office: CALIFORNIA SERVICE CENTER 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The California Service Center Director denied the petition for a nonimmigrant visa and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an alien with extraordinary ability in the field of business, pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O). The petitioner seeks to employ the beneficiary as its Marketing Manager for a period of two years.¹

The director denied the petition, finding that the petitioner failed to establish that the beneficiary qualifies as an alien of extraordinary ability his field of endeavor. The petitioner subsequently filed an appeal.² 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 stated the following on Form I-290B, Notice of Appeal or Motion:

The district director erred in determining that the Beneficiary did not meet the criteria of an extraordinary ability alien in the field of business and science. Evidence made part of the record, would show that the Beneficiary is highly acclaimed in the field of search engine optimization and meets the evidentiary standard for O-1A classification.

No additional documents accompanied the Form I-290B. Counsel indicated on Form I-1290B that it would submit a brief and/or additional evidence to the AAO within 30 days.

As of this date, no brief or additional evidence has been submitted. The record will be considered complete.

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.” This regulation is supplemented by the instructions on the Form I-290B, Notice of Appeal or Motion, by operation of the rule at 8 C.F.R. § 103.2(a)(1) that all submissions must comply with the instructions that appear on any form prescribed for those submissions.³

¹ The petitioner indicated on Form I-129 that the beneficiary will be employed as its Marketing Manager, but indicated in other documentation that the beneficiary will be employed as its Director of US Operations.

² The record is unclear as to whether the instant appeal was properly filed by the petitioner or the petitioner’s attorney. The instant Form I-290B, Notice of Appeal or Motion, was signed and filed by the petitioner’s former attorney of record, [REDACTED], purportedly on behalf of the petitioner. However, the new Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, filed with the instant appeal indicates that [REDACTED] is entering his or her appearance as attorney at the request of the beneficiary. The beneficiary’s name and personal address is listed in Part 3 of Form G-28 relating to the applicant, petitioner, or respondent, and the beneficiary signed as the applicant, petitioner, or respondent for the instant Form I-290B. If the beneficiary or the beneficiary’s attorney filed the instant appeal, then the appeal would be rejected. The beneficiary of a visa petition is not a recognized party in an appellate proceeding. 8 C.F.R. § 103.3(a)(1)(iii)(B).

³ The regulation at 8 C.F.R. § 103.2(a)(1) states in pertinent part :

With regard to appeals, Part 3 of the Form I-290B states: “**Appeal:** Provide a statement explaining any erroneous conclusion of law or fact in the decision being appealed.”

Upon review, the AAO agrees with the director’s decision and affirms the denial of the petition. Moreover, the AAO will summarily dismiss the appeal. The petitioner has not explained any erroneous conclusion of law or statement of fact on the part of the director as a basis for the appeal. The petitioner asserts in a general manner that the director erroneously denied the O-1 petition, but the petitioner did not provide any type of explanation for the basis of this assertion. The petitioner indicated that it would provide a brief to the AAO within 30 days, but to this date no additional documentation has been submitted.

Inasmuch as the petitioner has not specifically explained any erroneous conclusion of law or statement of fact as a basis for the appeal, the appeal will be summarily dismissed. 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.

ORDER: The appeal is summarily dismissed.

[E]very application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions . . . being hereby incorporated into the particular section of the regulations requiring its submission.