



U.S. Citizenship
and Immigration
Services

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FILE: SRC 04 046 52137 Office: TEXAS SERVICE CENTER Date:

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

001 29 2006

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

ON BEHALF OF PETITIONER:



PUBLIC COPY

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.

[Handwritten signature]

Robert P. Wiemann, Director
Administrative Appeals Office

CC: [Redacted]

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 dismissed as moot.

The petitioner is a corporation engaged in the import/export business. In order to employ the beneficiary as an import manager, the petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition on the basis that the petitioner had failed to establish that the proffered position meets the definition of a specialty occupation as set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On April 12, 2004, counsel for the petitioner submitted a Form I-290B (Notice of Appeal) without a brief or evidence. Although counsel entered a check mark at the box at section 2 of the Form I-290B which indicates that she would send a brief and/or evidence within 30 days, the AAO received neither. However, on June 21, 2004 the AAO received a Form G-28 (Notice of Entry of Appearance) and a letter from an attorney representing the beneficiary. In this letter, the beneficiary's attorney requests that the petition be withdrawn.

As a beneficiary is not a recognized party in a proceeding concerning H-1B nonimmigrant visa petitions, *see* 8 C.F.R. § 103.2(a)(3), the Form-G-28 filed by the beneficiary's attorney does not effect an appearance by counsel in this proceeding. Furthermore, withdrawal of a petition is an option available to a petitioner, but not to a beneficiary. *See* 8 C.F.R. § 103.2(b)(6). For these reasons, despite its clearly stated intent, the letter submitted by the beneficiary's attorney does not constitute a withdrawal of the petition. However, in light of the letter's content and its submission by an attorney whose Form G-28 attests to his good standing in the bar of the highest court of a particular state, the AAO recognizes that the appeal and the underlying petition have become moot: there is now credible evidence in the record that the beneficiary no longer wishes to be the subject of this petition. Citizenship and Immigration Services regulations require that the petitioner file an amended or new petition, with fee, to reflect any material changes in employment or the alien's eligibility as specified in the original petition. 8 C.F.R. 214.2(h)(2)(i)(E). Accordingly, the appeal shall be dismissed as moot.

ORDER: The appeal is dismissed.