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U.S. Citizenship
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FILE: EAC 07 151 53646 Office: VERMONT SERVICE CENTER

Date: OCT 01 2008

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker 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)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann
for Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner provides software development and IT consulting services. It seeks to employ the beneficiary as a software engineer and to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director approved the requested H-1B classification for the beneficiary, but denied the petitioner's request to change the beneficiary's status because the beneficiary had departed the United States while the Form I-129 petition was pending and is therefore ineligible for the requested change of status. The petitioner was advised that the beneficiary was ineligible for the change of status and would have to apply for the H-1B visa at a consulate abroad. The approved I-129 petition for classification of the beneficiary as an H-1B nonimmigrant was forwarded to the Chennai Consulate.

As provided in 8 C.F.R. § 248.3(g), when a change-of-status application is denied, the applicant shall be notified of the decision and the reasons for the denial. That regulation also states that there is no appeal from the denial of an application for change of status filed on a Form I-129.

Since there is no legal basis for the instant appeal, it must be rejected.

ORDER: The appeal is rejected.