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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



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FILE: [REDACTED]
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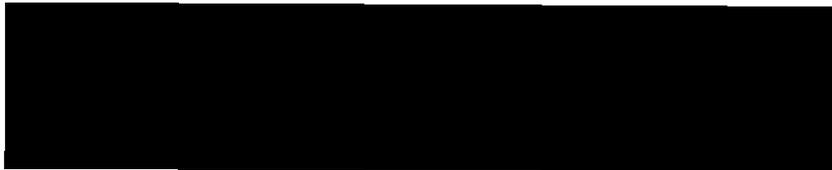
Office: NEBRASKA SERVICE CENTER

Date:
APR 04 2011

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

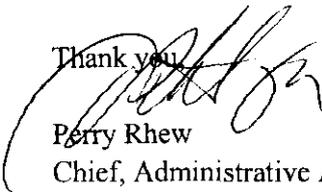


INSTRUCTIONS:

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, Nebraska Service Center, terminated action on the immigrant visa petition at the request of the petitioner's counsel. Counsel filed a motion to reopen and reconsider the director's decision. The director dismissed the motion. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a software development and consulting firm. It sought to employ the beneficiary permanently in the United States as a programmer analyst. As required by statute, a Form ETA 750, Application for Alien Permanent Employment Certification approved by the Department of Labor (DOL), accompanied the petition.

The Immigrant Petition for Alien Worker (Form I-140) was filed on May 1, 2007. A Form G-28, Notice of Entry of Appearance as Attorney or Representative signed by the petitioner's president, Sandy Singh, authorizing counsel's representation, accompanied the filing.

By letter, dated July 26, 2007, and signed by counsel, a list of the petitioner's other sponsored employees was provided, which were identified by name, receipt number and working status. For those employees who were identified as having "QUIT," the director was "advised to withdraw all the other I-140s above of employees that have QUIT the employer from the table above." The instant beneficiary was accurately identified by name and receipt number as having quit the petitioner's employ.

Acting upon counsel's instructions, on November 6, 2007, the director acknowledged receipt of the request to withdraw the Form I-140 filed on behalf of the beneficiary and advised that action had been terminated on this filing.

On September 21, 2009, counsel filed a motion to reopen the director's decision relevant to the withdrawal of the Form I-140 stating that the petitioner had never requested that the petition be "revoked" and that it should be reinstated immediately. Counsel also submits a copy of previous correspondence to the director dated November 14, 2007, in which United States Citizenship and Immigration Services (USCIS) had been requested to reinstate the petition because of its error in revoking the petition. Counsel states in the motion that he had inquired on August 21, 2009 to see why this case was "pending" and had been told by USCIS customer service that they thought that the case had been revoked. Counsel files the motion to reopen based upon the receipt of this information.

The director dismissed counsel's motion on December 23, 2009. Counsel appeals this decision citing the director's abuse of discretion in wrongfully denying the motion to reopen the Form I-140.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial

decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

We do not find that the director abused his discretion in accepting the petitioner's request through counsel to withdraw the petition. The beneficiary was specifically identified by name and receipt number as having quit the petitioner's employ. The petition was not revoked erroneously or otherwise by the director. The director terminated action on the petition pursuant to the request to withdraw submitted by counsel. Once a petition is withdrawn, USCIS may not refuse to consider the petition withdrawn. *Matter of Cintron*, 16 I&N Dec. 9 (BIA 1976).

As noted by the director, the regulation at 8 C.F.R. § 102.3(b) states:

(6) *Withdrawal*. An applicant or petitioner may withdraw an application or petition at any time until a decision is issued by USCIS or, in the case of an approved petition, until the person is admitted or granted adjustment or change of status, based on the petition. However, a withdrawal may not be retracted.

We find that the director's decision to accept counsel's request to withdraw the petition was appropriate and the refusal to accept a retraction of that withdrawal is supported by the regulation as noted above.

Based on the foregoing, counsel has failed to establish that his motion to reopen and reconsider should have been granted. 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 met that burden.

ORDER: The appeal is dismissed.