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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Citizenship and Immigration Services

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[redacted]

Date: FEB 0 8 2012 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

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 service center director denied the instant nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the matter is now moot.

In the Petition for a Nonimmigrant Worker (Form I-129), the petitioner described itself as a "computer aided design engineering & development" firm. To employ the beneficiary in what it designates as a "mechanical engineer liaison" position, the petitioner endeavors to classify her 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 denied the petition on February 10, 2010, because she determined that (1) the petitioner failed to establish that a bona fide offer of employment existed at the time the petition was filed; (2) the petitioner has not shown that the beneficiary will only work at the location shown on the Labor Condition Application (LCA) and thus, the LCA cannot be considered to be valid; and (3) the petitioner has not established that the proffered qualifies as a specialty occupation. On appeal, counsel contended that the petition involves a legitimate employee-employer relationship and does not involve "labor for hire." Counsel asserts that the director misapplied the Neufeld Memorandum dated January 8, 2010 to this case. Counsel also argues that the proffered position is a specialty occupation.

A review of U.S. Citizenship and Immigration Services (USCIS) records indicates that on April 7, 2010, a date subsequent to the denial of the instant petition, another employer filed a Form I-129 seeking nonimmigrant H-1B classification on behalf of the beneficiary. USCIS records further indicate that the other employer's petition was approved on July 9, 2010.

Because the beneficiary in the instant petition has been approved for H-1B employment with another petitioner, further pursuit of the matter at hand is moot.

ORDER: The appeal is dismissed. The petition is denied.