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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

D2

[redacted]

Date: JUL 30 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 describes itself as a [redacted]. To employ the beneficiary in what it designates as a [redacted] position, the petitioner endeavors 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, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because she determined that 1) the petitioner did not demonstrate an employer-employee relationship for the requested validity period, 2) the evidence of record does not establish that the duties of the proffered position require a specialty occupation, 3) the petitioner failed to establish that it has sufficient work for the requested period of intended employment, and 4) the petitioner failed to file an appropriate and valid Labor Condition Application (LCA). On appeal, counsel for the petitioner contends that the petitioner has a "true employer and employee relationship." In a letter dated February 15, 2011, the petitioner contends that it demonstrated an employer-employee relationship and that it is "abiding by the LCA regulations . . . ."

A review of U.S. Citizenship and Immigration Services (USCIS) records indicates that on December 8, 2011, a date subsequent to the denial of the instant petition, another employer filed a Form I-129 seeking H-1B nonimmigrant classification on behalf of the beneficiary. USCIS records further indicate that the other employer's petition was approved on December 15, 2011.

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.