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: NOV 0 3 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,

Michael T. Kelly
for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director revoked the approval of the visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be summarily dismissed.

The petitioner describes itself as a software consulting company, and it seeks to employ the beneficiary as a systems analyst. The petitioner, therefore, 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 (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petition was initially approved. Thereafter, the director issued a notice of intent to revoke the approval of the petition (hereinafter referred to as the NOIR), stating that U.S. Citizenship and Immigration Services (USCIS) had obtained new information indicating that the beneficiary was not employed in a specialty occupation position based on the insufficient and contradictory evidence contained in the record regarding the nature of the beneficiary's employment and ultimate work locations. The NOIR advised the petitioner of the nature of the derogatory information considered by USCIS and offered an opportunity for the petitioner to submit evidence in support of the petition and in opposition to the grounds alleged for revocation of the approval of the petition. The petitioner did not submit a response to the NOIR.

On August 23, 2011, the director revoked the approval of the petition in accordance with the provisions of 8 C.F.R. § 214.2(h)(11)(iii)(A). The director stated that the petitioner failed to respond to the NOIR and that the grounds for revocation of the approval of the petition had not been overcome.

On September 22, 2011, the petitioner and newly-retained counsel submitted a Notice of Appeal or Motion (Form I-290B). The petitioner checked Box A in Part 2 of the form to indicate that it was filing an appeal and that a brief and/or additional evidence was attached.[1]

The petitioner claims that it did not receive the NOIR but acknowledges that it moved its offices to a new address. Specifically, the petitioner submits a document entitled "Sworn Statement of [redacted] in support of the appeal which states as follows:

> I, the undersigned, [redacted] President of Fabica, In. with offices at [redacted] declare that I did not receive the 'Intent to Revoke' as stated on the notice of revocation, and therefore never responded to the intent to revoke.

The record reflects that the NOIR was sent to the address that the petitioner provided, on the Form I-129, as its address. Further, the petitioner does not claim that the NOIR was sent to an address other than that on the petition. The submissions on appeal indicate that the petitioner had moved in the interim between the filing of the petition and the mailing of the NOIR; the submissions on appeal, however, neither claim nor indicate that the petitioner's new address was submitted to USCIS. On appeal, the petitioner does not assert that it advised USCIS of a change of address or change of representation subsequent to the filing of the petition and before the NOIR was sent, and

[1] As the appeal will be summarily dismissed, the evidence provided on appeal need not be addressed in any detail beyond that provided in this decision.

that the request did not go to the new address. Also, a review of the USCIS computer system indicates the petitioner did not submit a change of address to USCIS between the date it filed the Form I-129 petition and the date the NOIR was issued. Accordingly, service of the NOIR was effected upon the mailing of the NOIR to the petitioner's last known address; the opportunity for the petitioner to submit a rebuttal to the NOIR had elapsed; and the director's decision to issue the decision revoking the approval of the petition complied with the pertinent regulations regarding service of notices to a petitioner and regarding revocation-upon-notice. In any event, as the appeal does not specify an error by the director either in issuing the NOIR or in issuing the revocation decision, no basis for an appeal has been provided with regard to the procedures followed by the director.

Next, upon review of the Form I-290B, the AAO further notes that the assertions on appeal contain no specific assignment of error with regard to either the merits of the NOIR or the merits of the director's decision to revoke the approval of the petition. In particular, the AAO notes that the Form I-290B and the allied documents submitted on appeal do not articulate in what respects, if any, the director's decision misstated or misconstrued the facts before her at the time of the decision here at issue, or misapplied any pertinent legal provision to the record of proceeding before her.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

The petitioner and counsel have failed to identify an erroneous conclusion of law or a statement of fact as a basis for the appeal and, therefore, the appeal must be summarily dismissed.

Further, the AAO also finds that a review of USCIS records indicates that, subsequent to the filing of the instant petition, another employer filed a Form I-129 petition seeking nonimmigrant H-1B classification on behalf of the beneficiary. USCIS records further indicate that this other employer's petition was approved on April 30, 2012. Because the beneficiary in the instant petition was approved for H-1B employment with another petitioner, further pursuit of the matter at hand is moot. Thus, in the alternative, the appeal will be dismissed and the petition revoked for this reason.[2]

ORDER: The appeal is summarily dismissed.

[2] The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In the instant case, the appeal will be summarily dismissed. It is additionally noted that the matter at hand is moot. Thus, the AAO will not further discuss any additional issues or deficiencies it may have observed with regard to the merits of the petition.