



U.S. Citizenship
and Immigration
Services

D1

[Redacted]

FILE: EAC 08 032 51802 Office: CALIFORNIA SERVICE CENTER Date: **DEC 03 2009**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

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

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).


Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner is a software development and consulting company that seeks to employ the beneficiary as a project manager/computer programmer 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 petitioner filed the Form I-129 petition on November 13, 2007. As of that date, the annual fiscal-year cap on the issuance of H-1B visas, set by section 214(g)(1)(A) of the Act, 8 U.S.C. § 1184(g)(1)(A) had been reached. The petition was accepted and adjudicated despite the cap limitation, however, because the petitioner indicated on the Form I-129 that the beneficiary had been previously granted status as an H-1B nonimmigrant in the past six years and had not left the United States after attaining such status, and was, therefore, exempt from the annual fiscal-year cap on the issuance of H-1B visas.

The director denied the petition, finding that the beneficiary's departure from the United States from January 13, 2006 to April 12, 2006 was more than one year prior to the filing of the instant petition and, consequently, subjected him to the annual cap for fiscal year 2008.

A review of U.S. Citizenship and Immigration Services (USCIS) records indicates that on February 21, 2008, a date subsequent to the denial of the instant petition, the petitioner submitted a new Form I-129 on the beneficiary's behalf. USCIS records further indicate that this second petition was approved on March 2, 2008, which granted the beneficiary H-1B status from March 17, 2008 until March 16, 2011. Because the beneficiary in the instant petition has been approved for H-1B employment with the petitioner based upon the filing of another petition, further pursuit of the matter at hand is moot.

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