

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE: **JUL 09 2014**

OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Michael T. Kelly
for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the 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 moot.

On the Form I-129 visa petition, the petitioner describes itself as a software development and services company established in 1990. In order to employ the beneficiary in a full-time position, the petitioner seeks 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).¹

The director denied the petition, finding that the petitioner failed to establish eligibility for the benefit sought. Counsel for the petitioner filed an appeal of the director's decision.

U.S. Citizenship and Immigration Services (USCIS) records indicate that on May 14, 2014, a date subsequent to the denial of the instant petition, another employer filed a petition seeking nonimmigrant classification of the beneficiary under section 101(a)(15)(H)(i)(b) of the Act. USCIS records indicate further that this petition was approved on May 22, 2014, with dates of validity from May 22, 2014 through May 22, 2015. Because the beneficiary of the instant petition has been approved for H-1B employment with another petitioner based upon the filing of a subsequent petition, further pursuit of the matter at hand is moot.²

ORDER: The appeal is dismissed as moot.

¹ When the present petition was filed, the beneficiary was employed by the petitioner pursuant to an approved H-1B specialty occupation petition. The petitioner filed the present petition to request in part a change in this previously approved employment.

² It appears that the beneficiary may no longer have any intent to work for the petitioner, if, as the recent approval of the petition filed by a different employer suggests, the beneficiary has departed from the petitioner for new employment. If that is the case, it would render the controversy over the H-1B petition "no longer live." See *Wong v. Napolitano*, 654 F.Supp.2d 1184, 1192 (D. Or. 2009) (holding that "a live controversy requirement is provided by a present intent by both parties to enter into an employment relationship which is being thwarted by USCIS or some other party").