



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAR 31 2014** OFFICE: VERMONT SERVICE CENTER

IN RE: Employer:
Alien:

REQUEST: Free Trade Request for a Nonimmigrant Worker Pursuant to Section 101(a)(H)(i)(b1) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b1)

ON BEHALF OF EMPLOYER:

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.

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director denied the H-1B1 nonimmigrant Free Trade status request. The Administrative Appeals Office dismissed the subsequent appeal. The matter is now again before the AAO on a combined motion to reopen and reconsider. The motion will be dismissed.

On the Form I-129, the employer describes itself as a professional language services business. It seeks to employ the alien, a citizen of Chile, as a network system and data communications analyst. The employer submitted the Form I-129 in an endeavor to change the alien's nonimmigrant classification based on a Free Trade status agreement to H-1B1 nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b1).

The director denied the request on December 12, 2012, finding that the employer failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. Counsel submitted an appeal of the decision, and the AAO dismissed the appeal. Thereafter, the employer and its counsel filed a combined motion to reopen and reconsider as indicated by the check mark at box F of Part 2 of the Form I-290B.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that a motion to reconsider "must be filed within 30 days of the decision that the motion seeks to reconsider." An additional three days is allocated for service by mail. 8 C.F.R. § 103.8(b). Thus, a motion to reconsider must be filed within 33 days of the date of the AAO's decision. As specified by the regulations, a benefit request (in this case, the employer's combined motion) is "considered received by USCIS [U.S. Citizenship and Immigration Services] as of the actual date of receipt at the location designated for filing such benefit request." 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the AAO issued the decision on the appeal on Wednesday, October 2, 2013. The combined motion to reopen and reconsider was received by USCIS on Wednesday, November 6, 2013. Thus, the submission was received 35 days after the prior decision was issued. Accordingly, the combined motion was untimely filed and must be dismissed.

Furthermore, the submission does not satisfy the requirements of a motion. Specifically, the regulation at 8 C.F.R. § 103.5(a)(1) states the following:

(iii) Filing Requirements—A motion shall be submitted on Form I-290B and may be accompanied by a brief. It must be:

* * *

(C) Accompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding;

In this matter, the submission constituting the combined motion does not contain a statement as to whether or not the unfavorable decision has been or is the subject of any judicial proceeding as required by 8 C.F.R. § 103.5(a)(1)(iii)(C). Moreover, if the decision has been or is the subject of any judicial proceeding, the employer failed to provide any information regarding "the court, nature, date, and status or result of the proceeding" as stipulated in the regulations. Accordingly, the filing does not meet the applicable requirement for motions as stated at 8 C.F.R. §103.5(a)(1)(iii)(C), and must also be dismissed for this reason.

In the instant case, the combined motion does not meet the applicable filing requirements. Accordingly, it must be dismissed.

ORDER: The combined motion to reopen and reconsider is dismissed.