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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: WAC 08 137 50819 Office: CALIFORNIA SERVICE CENTER Date: FEB 01 2010

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 describes itself as a software development and consulting firm that seeks to employ the beneficiary as a 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 director denied the petition for the following reasons: because the petitioner failed to establish that the proffered position is a specialty occupation; because the petitioner did not submit an appropriate and valid Department of Labor, Form ETA-9035, Labor Condition Application (LCA); because the petitioner did not establish that it qualifies as a United States employer or agent; and because the petition and all evidence submitted with it is not credible and sufficient to establish that the petitioner has complied with the terms and conditions of employment. On appeal, counsel for the petitioner submits a brief and supporting documentation.

A review of U.S. Citizenship and Immigration Services (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 the beneficiary's behalf. USCIS records further indicate that this other employer's petition was approved, which granted the beneficiary H-1B status from November 20, 2008 to November 5, 2011. Because the beneficiary in the instant petition has been approved for employment with another petitioner, further pursuit of the matter at hand is moot.

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