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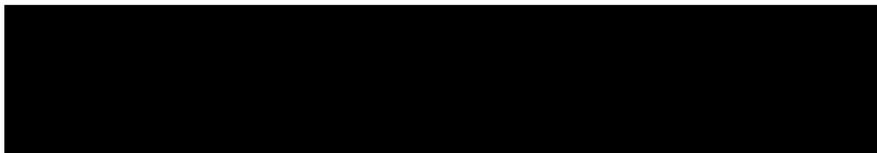
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



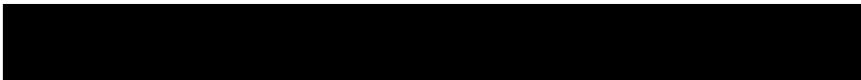
U.S. Citizenship
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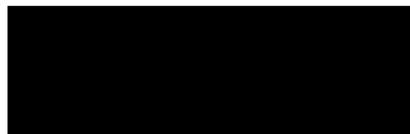
JUN 01 2010

FILE:  Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: 
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:



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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director, Vermont Service Center, denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a licensed adult day healthcare company and seeks to employ the beneficiary as a social worker. 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 because the beneficiary had remained in the United States in H-1B status for longer than six years and the petitioner had not satisfied the requirements for an extension of stay under the "American Competitiveness in the Twenty-First Century Act," (AC21) as amended by the Twenty-First Century Department of Justice Appropriations Authorization Act" (DOJ Authorization Act). The director determined that because the petitioner did not file for an extension for the beneficiary while the beneficiary was still in valid H-1B status, the beneficiary was not eligible for approval under AC21 and the DOJ Authorization Act.

On appeal, counsel acknowledges that the instant petition was filed one week after the approval of a petition granting the beneficiary H-1B status was revoked. Counsel contends that the petitioner had not previously sponsored an H-1B application and, therefore, it "took time for the HR people to learn the process and get the required documents in order." Counsel requests that United States Citizenship and Immigration Services (USCIS) overlook this delay in filing, and points out that an immigrant petition for alien worker (Form I-140) filed on the beneficiary's behalf has been approved, and her application to register permanent residence or adjust status (Form I-485) has been pending for over six months.

A review of the records of USCIS indicates that, as contended by counsel, this beneficiary is the beneficiary of an approved immigrant petition and has adjusted status to that of a permanent resident as of May 10, 2010. While the petitioner has not withdrawn the appeal in this proceeding, it would appear that the beneficiary is presently a permanent resident and the issues in this proceeding are moot. Therefore, this appeal is dismissed.

ORDER: The appeal is dismissed as moot.