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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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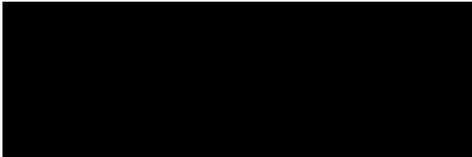


FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **MAY 24 2010**

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:



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, California 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 as the matter is now moot.

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner states that it is a consulting services business, that it was established in 2000, that it employs approximately 32 persons, and that it has an estimated gross annual income of \$3,500,000. It seeks to continue the employment of the beneficiary as a programmer analyst from February 10, 2007 to February 10, 2010. Accordingly, the petitioner 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 Form I-129 was filed January 26, 2007. The director initially approved the Form I-129 on April 23, 2007. Upon review of the record, the director issued a Notice of Intent to Revoke (NOIR) the petition on December 21, 2007. In the NOIR, the director determined that the only issue to be discussed in the matter was whether the beneficiary was entitled to a seventh year extension of H-1B classification. The director found that the beneficiary had been in H-1B classification since February 11, 2001 and that the petitioner's request to continue the beneficiary's status to February 10, 2010 placed the beneficiary beyond the six-year limit.

In response to the NOIR, counsel for the petitioner asserted that the petitioner had filed an appeal of the January 19, 2007 denial of the Form I-140 petition (LIN 07 031 54149) but that United States Citizenship and Immigration Services (USCIS) had treated the appeal as a motion to reopen and reconsider and issued a second denial dated April 6, 2007, rather than forwarding the appeal to the AAO once it reached an unfavorable decision. On January 29, 2008, upon review of the response to the NOIR, the director revoked the approval of the Form I-129 petition that is the subject of this appeal. The director determined that a final decision had been made on the beneficiary's Form I-140 immigrant petition and thus the beneficiary was not eligible for an extension of H-1B classification.

Counsel for the petitioner timely filed a Form I-290B, Notice of Appeal or Motion, on February 13, 2008. Counsel again asserts that the petitioner filed an appeal of the denial of the Form I-140 petition and that the AAO, the body having jurisdiction of such appeals, had not issued a decision on the appeal of the denial of the Form I-140 (LIN 07 031 54149) petition.

A review of the records of U.S. Citizenship and Immigration Services (USCIS) indicates that this beneficiary filed a Form I-129, Petition for a Nonimmigrant Worker, which was approved granting the beneficiary H-1B status from February 11, 2010 to February 10, 2011. While the petitioner has not withdrawn the appeal in this proceeding, it would appear that the beneficiary is presently in H-1B status and, thus, the issues in this proceeding are moot. Therefore, this appeal is dismissed.

ORDER: The appeal is dismissed as moot.