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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: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: NOV 05 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:

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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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 Rife

Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition that 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 visa petition, the petitioner described itself as an IT (Internet Technology) software development and professional services firm. In order to employ the beneficiary in what it designates as a business development manager 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 (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on June 2, 2009 because the petitioner (1) failed to establish that it has standing to submit the visa petition as the beneficiary's prospective employer or agent, (2) failed to establish that the labor condition application submitted to support the visa petition is valid for the location or locations where the beneficiary would work, and (3) failed to demonstrate that the beneficiary would be employed in a specialty occupation. On appeal, counsel submitted a brief contesting the director's findings.

A review of U.S. Citizenship and Immigration Services (USCIS) records indicates that on July 9, 2009, a date subsequent to the denial of the instant petition, the petitioner submitted a new Form I-129 (receipt number [REDACTED]) on the beneficiary's behalf. USCIS records further indicate that this second petition was approved on September 16, 2009, which granted the beneficiary H-1B status from September 16, 2009 to July 5, 2012. Because the beneficiary in the instant petition has been approved for employment with the petitioner based upon the filing of another petition, further pursuit of the matter at hand is moot.

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