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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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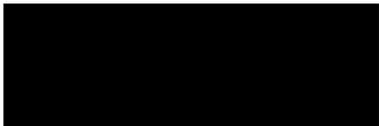


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: SEP 02 2010

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,

for Michael T. Kelly
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 is a healthcare staffing company that seeks to employ the beneficiary as a physical therapist. 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 petitioner failed to establish that (1) it was exempt from the numerical cap by virtue of its affiliation with an institute of higher education; or (2) the beneficiary was qualified to perform the duties of a specialty occupation. On appeal, counsel for the petitioner submits a brief and additional evidence.

A review of U.S. Citizenship and Immigration Services (USCIS) records indicates that on April 7, 2009, a date subsequent to the denial of the instant petition, the petitioner submitted a new Form I-129 on the beneficiary's behalf. USCIS records further indicate that this second petition was approved on June 10, 2009, which granted the beneficiary H-1B status from October 1, 2009 until September 30, 2010. 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.