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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: **FEB 07 2012** Office: CALIFORNIA SERVICE CENTER File: [REDACTED]

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 \$630. 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,

A handwritten signature in black ink, appearing to read "Perry Rhew", with a stylized flourish at the end.

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 claims to be a wireless communications company with 33 employees that seeks to employ the beneficiary as an RF Engineer. 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 (1) the petitioner failed to establish that it will be a “United States employer” having an “employer-employee relationship” with the beneficiary as an H-1B temporary “employee”; (2) the petitioner failed to submit appropriate and valid Labor Condition Applications for all locations of intended employment; and (3) the petitioner failed to establish that the proffered position qualifies as 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 October 24, 2011, 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 November 1, 2011, which granted the beneficiary H-1B status from October 31, 2011 until September 30, 2014. Because the beneficiary in the instant petition has been approved for H-1B 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.