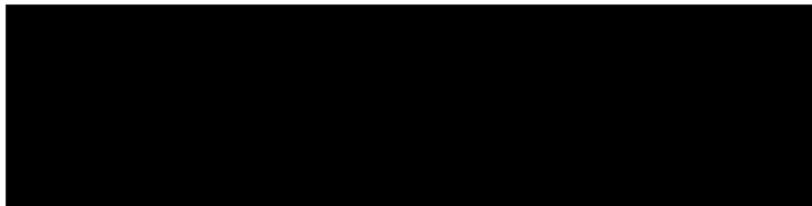


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



D2

DATE: **JUL 05 2012** Office: VERMONT SERVICE CENTER File:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 an information technology and software development company that seeks to employ the beneficiary as a programmer analyst. 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).

On September 2, 2010, the director denied the petition, finding that the petitioner failed to respond to the second request for evidence (RFE). The director identified the following issues as the basis for denial: 1) itinerary submitted is not sufficient as it does not support the existence of a specialty occupation; 2) a valid Department of Labor Form ETA 9035E has not been filed to cover the locations where the services are to be performed by the beneficiary; and 3) the record does not establish the beneficiary's specific duties while working under contract for a client, thus, a determination cannot be made on whether the proffered position is a specialty occupation. On appeal, counsel stated that they did not receive a correct version of the second RFE. Counsel also provided more information about the proffered position.

A review of U.S. Citizenship and Immigration Services (USCIS) records indicates that the petitioner submitted a new Form I-129 on behalf of the beneficiary. USCIS records further indicate that this second petition was approved on October 26, 2011, which granted the beneficiary H-1B status from October 26, 2011 to March 27, 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.