

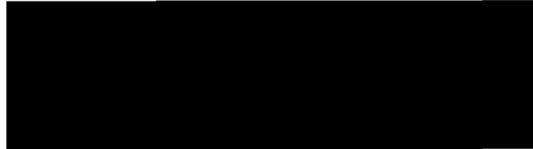
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

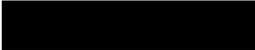
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Date: **MAR 29 2012**

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:



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,

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Michael T. Kelly
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director revoked the approval of the visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be summarily dismissed.

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the California Service Center on October 2, 2007. The petitioner stated on the Form I-129 that it is an enterprise engaged in information technology (IT) consulting with 14 employees.

In order to employ the beneficiary in what it designates as a senior ERP consultant position, the petitioner seeks 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, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petition was initially granted. Thereafter, the director issued a notice of intent to revoke (NOIR) the approval of the petition, stating that USCIS had obtained new information indicating that the beneficiary was not working in the location specified by the petitioner on the Form I-129 petition and Labor Condition Application (LCA). The notice stated that the petitioner had not provided a Form ETA 9035 or Form ETA 9035E that was filed and certified prior to the submission of the petition for the actual work location where the beneficiary was employed in accordance with the regulations set forth at 8 C.F.R. § 214.2(h)(4)(i)(B)(1). The NOIR advised the petitioner and counsel of the derogatory information considered by USCIS and offered an opportunity for the petitioner to submit evidence in support of the petition and in opposition to the grounds alleged for revocation of the approval of the petition. The petitioner and counsel did not submit a response to the NOIR.

On June 22, 2010, the director revoked the approval of the petition. The director stated that the petitioner failed to respond to the NOIR and that the grounds for revocation of the approval of the petition had not been overcome.

On July 26, 2010, the petitioner and counsel submitted a Notice of Appeal or Motion (Form I-1290B). The petitioner checked Box A in Part 2 of the form to indicate that it was filing an appeal and that a brief and/or additional evidence were attached.¹ The body of the appeal reads, in its entirety:

The approved H-1B filed by our company on behalf of [the beneficiary] was revoked by your office on June 22, 2010. You state in your letter that you notified us on March 2, 2010 of your intent to revoke but we never received that notice. We called USCIS and requested a copy of the notice of intent to revoke to review the grounds but have not received it to date. We believe the problem in this case is that we moved our offices to a

¹ As the appeal will be summarily dismissed, the AAO need not address the evidence provided on appeal except to note that the petitioner failed to provide an LCA certified prior to the filing of the Form I-129 petition for the actual work location(s) where the beneficiary was employed. The LCA submitted on appeal was filed and certified approximately 1 ½ years after the filing of the Form I-129 petition. Moreover, the LCA submitted on appeal was not signed by the petitioner as required under the regulations set forth at 8 C.F.R. § 103.2(a)(2), 8 C.F.R. § 214.2(h)(4)(iii)(B)(2) and 20 C.F.R. § 655.730(c)(2) and (3).

new address. Our new company address is [REDACTED] [REDACTED] Our address at the time this petition was filed was [REDACTED] [REDACTED] [The beneficiary] has most recently been working for our company in the offices of the client [REDACTED] in Oakland, CA and we obtained a new LCA for this location a copy of which is enclosed. We also have enclosed copies of [the beneficiary's] W-2 forms and recent paystubs as evidence that he has been consistently employed by our company since December 2007. In July of this year we re-assigned [the beneficiary] to a new client location, namely, [REDACTED] located at [REDACTED] We have obtained an LCA for this subsequent location as well. Based on the fact that [the beneficiary] has consistently been employed by our company pursuant to his H-1B status we are requesting that you please reconsider your decision to revoke his H-1B petition.

The petitioner claims that it did not receive the NOIR but acknowledges that it moved its offices to a new address. The petitioner does not claim that the NOIR was sent to an address other than that on the petition, or notice of representation. The petitioner does not assert that it advised USCIS of a change of address or change of representation subsequent to the filing of the petition and before the NOIR was sent, and that the request did not go to the new address. A review of the USCIS computer system indicates the petitioner did not submit a change of address to USCIS between the date it filed the Form I-129 petition and the date the NOIR was issued. The AAO notes that the petitioner does not assert, nor did it provide any evidence to indicate, that its counsel failed to receive the NOIR.

Upon review of the Form I-290B, the AAO further notes that the petitioner's statement contains no specific assignment of error. The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

The petitioner and counsel have failed to identify an erroneous conclusion of law or a statement of fact as a basis for the appeal and, therefore, the appeal must be summarily dismissed.

The AAO also finds that a review of USCIS records indicates that on August 9, 2010, 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 August 31, 2010, which granted the beneficiary H-1B status from August 5, 2010 to May 31, 2011. 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. Thus, in the alternative, the appeal will be dismissed and the petition revoked for this reason.²

ORDER: The appeal is summarily dismissed.

² The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In the instant case, the appeal will be summarily dismissed. It is additionally noted that the matter at hand is moot. Thus, the AAO will not further discuss any additional issues or deficiencies it observed in the record of proceeding.