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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: **SEP 07 2012**

Office: CALIFORNIA 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the instant nonimmigrant visa petition and dismissed a subsequent motion to reopen. The matter is now before the Administrative Appeals Office on appeal. The appeal of the motion decision will be dismissed as the matter is now moot.

In the Form I-129 visa petition, filed on June 14, 2010, the petitioner described itself as an Information Technology firm. To employ the beneficiary in what it designates as a Software Developer – Intermediate position, the petitioner endeavors 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, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on [REDACTED] 2011, finding that the petitioner had failed to timely respond to a request for evidence (RFE). The director rejected the subsequent motion as untimely filed.

On appeal, instead of addressing the dismissal of the late-filed motion, which is the subject of this appeal, counsel contended that he and the petitioner did not receive the original RFE but timely responded to a copy subsequently faxed to them. Similarly, counsel stated that he and the petitioner did not receive the January 10, 2011 decision. Counsel asserted that the decision of denial should be withdrawn.

A review of U.S. Citizenship and Immigration Services (USCIS) records indicates that on [REDACTED] 18, 2011, a date subsequent to the denial of the instant petition, another employer filed a Form I-129 petition seeking nonimmigrant H-1B classification on behalf of the beneficiary. USCIS records further indicate that this other employer's petition was approved on [REDACTED] 2011. Yet another employer filed a Form I-129 visa petition for the beneficiary on [REDACTED] 2012, which was approved on [REDACTED] 2012. Because the beneficiary in the instant petition has been approved for H-1B employment with other petitioners, further pursuit of the matter at hand is moot.

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