



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: APR 19 2013

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 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,

Ron Rosenberg
Acting 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 submitted a Petition for Nonimmigrant Worker (Form I-129) to the California Service Center on June 19, 2012. In the Form I-129 visa petition, the petitioner describes itself as a non-profit integrated healthcare system established in 1898. In order to employ the beneficiary in what it designates as a family medicine physician position, the petitioner seeks 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).

On October 5, 2012, the director denied the petition, finding that the petitioner failed to establish that it is a cap exempt organization based on its affiliation with an institution of higher education under the applicable statutory and regulatory provisions. The director noted that the beneficiary is seeking employment with a new employer that does not qualify for any exemptions to the numerical cap and the cap for the present fiscal year had already been completed. On appeal, counsel asserts that the director's basis for denial was erroneous.

A review of U.S. Citizenship and Immigration Services (USCIS) records indicates that on January 18, 2013, a date subsequent to the denial, 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 January 25, 2013. Because the beneficiary in the instant petition has been approved for H-1B employment with another petitioner, further pursuit of the matter at hand is moot.

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