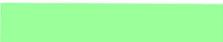




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAR 04 2013** 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)

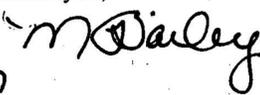
ON BEHALF OF PETITIONER:


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 with the field office or service center that originally decided your case by filing a 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: On June 4, 2009, the Director of the Vermont Service Center denied the nonimmigrant visa petition. The petitioner appealed this denial to the Administrative Appeals Office (AAO) and, on November 1, 2011, the AAO dismissed the appeal. On November 30, 2011, the petitioner and its counsel filed a motion to reopen. The motion will be dismissed as the matter is now moot.

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the Vermont Service Center on December 4, 2008. In the Form I-129 visa petition, the petitioner describes itself as a fast food restaurant established in 2003. In order to employ the beneficiary in what it designates as a systems analyst 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 (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. The petitioner and its counsel submitted an appeal of the denial of the petition. The AAO reviewed the record of proceeding and dismissed the appeal. The matter is once again before the AAO on motion.

A review of U.S. Citizenship and Immigration Services (USCIS) records indicates that this beneficiary is also the beneficiary of an approved immigrant petition and has adjusted status to that of a U.S. conditional permanent resident as of October 19, 2012. While the petitioner has not withdrawn the motion in this proceeding, it would appear that the beneficiary is presently a conditional permanent resident and the issues in this proceeding are moot. Therefore, the motion is dismissed as moot.

In the alternative, the motion to reopen shall be dismissed for failing to meet an applicable filing requirement. Specifically, the regulation at 8 C.F.R. § 103.5(a)(1) states the following:

(iii) Filing Requirements—A motion shall be submitted on Form I-290B and may be accompanied by a brief. It must be:

* * *

(C) Accompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding;

In this matter, the submission constituting the motion does not contain a statement as to whether or not the unfavorable decision has been or is the subject of any judicial proceeding as required by 8 C.F.R. § 103.5(a)(1)(iii)(C). Thus, the petitioner and counsel failed to comply with the requirements as set by the regulations for properly filing a motion.

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The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion does not meet the applicable filing requirement as stated at 8 C.F.R. §103.5(a)(1)(iii)(C), it must also be dismissed for this reason. It is considered an independent and alternate basis for dismissing the motion to reopen.¹

ORDER: The motion is dismissed.

¹ As the motion to reopen is dismissed for the reasons discussed above, the AAO will not further discuss the additional issues and deficiencies that it observes in the record of proceedings.