



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF F-S-S-, INC.

DATE: AUG. 30, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, an IT consulting firm, seeks to temporarily employ the Beneficiary as a “senior software consultant” under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director, Vermont Service Center, denied the petition, concluding that the evidence of record did not establish that the Petitioner had specialty occupation work available for the Beneficiary for the employment period specified in the petition. Subsequently, the Petitioner filed a motion to reopen and a motion to reconsider, and the Director denied the combined motion. Thereafter, the Petitioner filed a second combined motion to reopen and reconsider. The Director denied the second motion, and affirmed its decision to deny the petition.

The matter before us is the denial of the second motion. Our preliminary review of the record revealed a substantive error in the disposition of the second motion. We will withdraw the Director’s decision on the second motion and remand the matter for further proceedings.

I. PROCEDURAL HISTORY AND EVIDENCE IN THE RECORD

The record establishes the following salient facts:

- On August 15, 2014, the Petitioner filed the second combined motion to reopen and reconsider.
- On December 1, 2014, the Director issued a request for additional evidence (RFE).
- The RFE gave the Petitioner 87 days to respond; the Petitioner had until February 26, 2015 to file a response.
- The Director denied the combined motion on May 7, 2015, stating, in part:

On December 1, 2014, USCIS [U.S. Citizenship and Immigration Services] requested additional documentary evidence to establish that the project [upon

(b)(6)

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which the Petitioner attested the Beneficiary would work] required the holder of a baccalaureate degree to perform the job duties. To date, USCIS has not received a response to that request.

- The record contains a copy of the RFE with “NO RESPONSE” stamped in red ink.

II. ANALYSIS

On appeal, the Petitioner asserts that the Director’s statement that USCIS had not received a response to the RFE was not true. In support, the Petitioner provided copies of [REDACTED] documentation establishing that its RFE reply was delivered to the Vermont Service Center at 10:28 a.m. on Monday, February 9, 2015.

Upon review, it appears that the Petitioner did submit a timely response to the RFE. Specifically, the record contains a brief identifying the receipt number for the second motion, and referring to the Director’s RFE, along with supporting evidence. Further, the brief bears a Vermont Service Center date stamp consistent with the Petitioner’s delivery information. The date stamp reads:

Received
FEB 09 2015
VSC - 21

Because the Director did not consider the Petitioner’s response to the RFE, and the response includes a legal brief and substantive documentation pertinent to the combined motion, we will remand this matter to the Director to fully consider the Petitioner’s entire response to the RFE as received at the Vermont Service Center on February 9, 2015, and to render a new decision on the second motion. Further, if the Director’s new decision on the motion is adverse to the Petitioner, the Director shall certify it to us for review.¹

III. CONCLUSION

The matter will be remanded to the Director for further review.

ORDER: The May 7, 2015, decision of the Director, Vermont Service Center, is withdrawn. The matter is remanded to the Director, Vermont Service Center, for further proceedings consistent with the foregoing opinion and for entry of a new decision, which, if adverse, shall be certified to us for review.

Cite as *Matter of F-S-S-, Inc.*, ID# 17965 (AAO Aug. 30, 2016)

¹ This instruction is not intended to suggest that the Director reach a particular outcome on the merits of the motion.