



U.S. Citizenship  
and Immigration  
Services

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FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: **DEC 27**

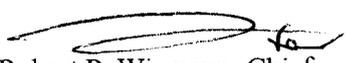
IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:  
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected. The case will be remanded to the Texas Service Center to be treated as a motion.

The petitioner is a provider of optical services and items and seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

Noting that the record was deficient, the director issued a request for additional evidence (RFE) dated June 15, 2005. Although the petitioner's 12-week response period had not expired, the director determined that the petitioner failed to submit the requested evidence and issued a decision dated August 27, 2005 denying the petition for abandonment, pursuant to 8 C.F.R. § 103.2(b)(13).

Despite the director's improper determination that the petition had been abandoned, the director properly noted that no appeal would lie from the decision. Regardless, the petitioner submitted an appeal on September 7, 2005.

The regulations provide that no appeal lies from the denial of a petition for abandonment. *See* 8 C.F.R. § 103.2(b)(15). As there is no appeal from the director's denial, the petitioner's appeal must be rejected.

However, as the record shows, the director's finding that the petition had been abandoned was incorrect. Although the petitioner raised this point again in a timely but separately filed motion to reopen and reconsider dated September 27, 2005, the director forwarded the matter to the AAO, despite the AAO's lack of jurisdiction either over the appeal or the motion. Pursuant to 8 C.F.R. § 103.3(a)(2)(ii), the director's error must be addressed by the Texas Service Center, the office that issued the latest decision in this proceeding. Based on a preliminary review of the record, it appears that a motion to reconsider pursuant to 8 C.F.R. § 103.5(a)(3) should be granted.

Accordingly, the matter is remanded. The director is instructed to fully review the petitioner's motion for the purpose of granting the motion and considering the response to the RFE.

**ORDER:** The appeal is hereby rejected. The matter is remanded to the director for a new decision which, if adverse, shall be certified to the AAO for review.