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U.S. Citizenship
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[REDACTED]

FILE: [REDACTED]
SRC 04 193 51550

Office: TEXAS SERVICE CENTER

Date: **AUG 29 2006**

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

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.

Mari Johnson

↪ Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center. The petitioner filed a motion to reopen, which the director dismissed. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree or an alien of exceptional ability. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

The petition was filed on July 6, 2004. On March 14, 2005, noting that the record was deficient, the director requested additional evidence in support of the petition. On July 7, 2005, after the petitioner failed to submit the requested evidence, the director denied the petition for abandonment pursuant to the regulations at 8 C.F.R. §§ 103.2(b)(13) and (15). The regulation at 8 C.F.R. § 103.2(b)(15) provides that no appeal lies from the denial of a petition for abandonment.

On August 1, 2005, the petitioner filed a motion to reopen, which the director dismissed on September 28, 2005. The director correctly informed the petitioner that no appeal would lie from her decision “to dismiss a motion to reopen a petition denied due to abandonment.” The regulation at 8 C.F.R. § 103.5(a)(6) states: “*Appeal to AAU from Service decision made as a result of a motion.* A field office decision made as a result of a motion may be applied [appealed] to the AAU only if the original decision was appealable to the AAU.”

In this case, the original decision was not appealable to the AAO; therefore, the AAO does not have jurisdiction over this matter. Nevertheless, the petitioner submitted the appeal on October 25, 2005.

As there is no appeal from the director’s dismissal of the motion to reopen, the petitioner’s appeal must be rejected.

ORDER: The appeal is rejected.