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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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Washington, D.C. 20536



File: EAC 01 196 55145

Office: Vermont Service Center

Date: 20 Jun 2002

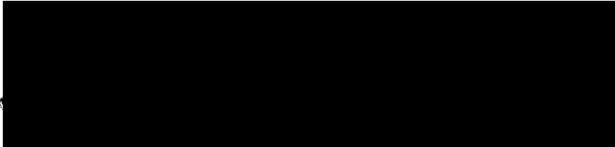
IN RE: Petitioner:

Beneficiary:



Application: Immigrant Petition for Alien Worker as a Skilled Worker Pursuant to Section 203(b)(3)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)(A)(i).

IN BEHALF OF APPLICANT:



Public Copy

INSTRUCTIONS:

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

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert J. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected.

The petitioner is a restaurant that seeks to classify the beneficiary as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(3)(A)(i). Noting that the record was deficient, the director requested an original Department of Labor Form ETA 750 that had been certified by the Secretary of Labor in accordance with section 212(a)(5)(A) of the Act. After the petitioner failed to submit the requested evidence, the director denied the petition for abandonment, pursuant to 8 C.F.R. 103.2(b)(15), and for failure to submit a labor certification endorsed by the Department of Labor. The director correctly informed the petitioner that no appeal would lie from the decision.

The petitioner submitted an appeal on January 31, 2002. The director declined to treat the appeal as a motion to reopen or reconsider, and forwarded the appeal and the related record to the Associate Commissioner for review. 8 C.F.R. 103.3(a)(2).

Regarding the denial of an employment-based immigrant visa petition, the regulation at 8 C.F.R. 103.1(f)(3)(iii)(B) provides for the appeal of: "[p]etitions for immigrant visa classification based on employment . . . under section 204.5 . . . of this chapter except when the denial of the petition is based upon lack of a certification by the Secretary of Labor under section 212(a)(5)(A) of the Act."

Furthermore, it is noted that no appeal lies from the denial of an application for abandonment. 8 C.F.R. 103.2(b)(15).

For these reasons, the appeal must be rejected.

**ORDER:** The appeal is rejected.