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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



JUL 16 2003

File: WAC 02 081 53349 Office: California Service Center

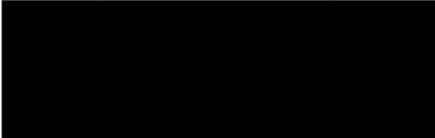
Date:

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office. The decision of the director will be withdrawn. The matter will be remanded.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a cook. As required by statute, the petition is accompanied by a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor.

A Notice of Intent to Deny, which included a request for additional evidence, was issued in this matter on May 15, 2002. Pursuant to 8 C.F.R. § 103.2(b)(13), the petitioner was obliged to respond to that request. That section states that, in the event that a petitioner does not respond to such a notice, the petition shall be considered abandoned and shall be denied. The director found that the petitioner had not responded and denied the petition.

On the Form I-290B Notice of Appeal, the petitioner asserted that the response to the Notice of Intent to Deny was due on June 15, 2002, and that the Service received his response on June 3, 2002. In support of that assertion, the petitioner submitted a photocopy of a Domestic Return Receipt showing that the California Service Center received the petitioner's submission on June 3, 2002, as the petitioner claimed.

Pursuant to 8 C.F.R. § 103.2(b)(15), no appeal shall lie from a denial of a petition based upon abandonment. However, because the petitioner established that it responded to the Notice of Intent to Deny, it has overcome the sole reason for denial. The Form I-290B should have been treated as a motion to reopen and the petition adjudicated on the merits.

ORDER: The decision of the director is withdrawn. The matter is remanded for further action and consideration.