



U.S. Citizenship
and Immigration
Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY



B6

FILE: WAC 02 092 53829 Office: CALIFORNIA SERVICE CENTER Date: DEC 21 2005

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

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 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, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the director, California Service Center. It was appealed to the Administrative Appeals Office (AAO). The AAO withdrew the director's decision. The AAO remanded the matter to the director for review of the record of proceeding and entry of a new decision. Upon review of the record of proceeding, the director issued a notice of intent to deny the approval of the petition that requested additional information. The petitioner failed to respond to the notice of intent to deny the petition. The director therefore denied the petition accordingly.

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

The chronology of this case is as follows. The petitioner filed a Form I-140 petition dated January 2, 2002. Requests for evidence were issued to petitioner on March 19, 2002 and July 10, 2002. The petitioner transmitted timely responses to the director. On October 18, 2002 a decision was issued by the director denying the petition. The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition.¹ On November 15, 2002, the petitioner appealed the director's decision. Acting upon the appeal, the AAO on March 22, 2004 remanded the case to the director for review and entry of a new decision. The director issued a notice of intent to deny the petition to the petitioner requesting additional information on July 20, 2004. In its notice of intent to deny the petition the director raised an additional ground for denial, that is that the petitioner had not shown that the beneficiary possessed the job experience as required by the certified Alien Employment Application.² The petitioner did not respond to the notice. Accordingly, the director denied the petition and certified the case for review to the AAO on September 21, 2004.

The regulation at 8 C.F.R. § 103.2(b)(13) states the following: "*Effect of failure to respond to a request for evidence or appearance.* If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied."

The regulations are clear that failure to respond to a request for evidence *shall* be considered abandoned and denied. Denials for abandonment cannot be appealed. 8 C.F.R. § 103.2(b)(15).

ORDER: The appeal is summarily dismissed.

¹ The tax returns that the petitioner submitted stated taxable income losses for years 1998, 1999, and 2001, and taxable income of \$9,938.00 in 2000. The proffered wage was \$13,520.00 per annum.

² A fraud investigation ordered by the director reported that the two job verification letters submitted by the beneficiary were fraudulent.