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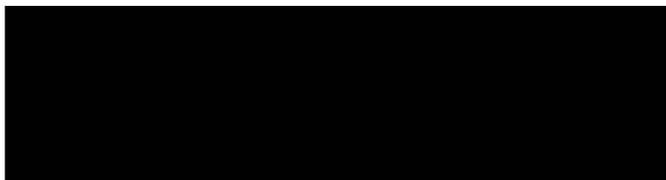
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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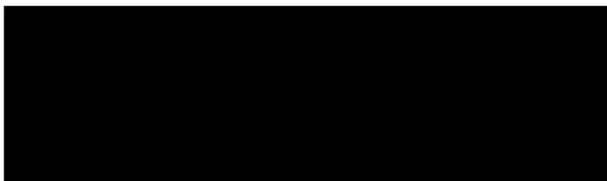
FILE: WAC 04 095 53095 Office: CALIFORNIA SERVICE CENTER Date: JUL 06 2006

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 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, California Service Center, denied the visa petition that is now before the Administrative Appeals Office on appeal. The matter will be remanded for further consideration and action.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a cook. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor accompanies the petition. The director found that the petitioner had failed to respond to a request for evidence. The director accordingly denied the petition.

Counsel submitted a Form I-290B on which he stated that that a timely submission had been made. Counsel provided a FedEx receipt and tracking report in support of that proposition. Those documents appear to show that counsel's submission was timely received.

A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under §103.5. 8 C.F.R. § 103.2(b)(15). Although no appeal is available to the petitioner and the service center appears to have declined to treat counsel's submission of a Form I-290B as a motion this office may reopen the matter *sua sponte*.

The matter is remanded so that the service center can consider the evidence submitted with the appeal and take any action it deems appropriate.

**ORDER:** The matter is remanded for further action and consideration.