

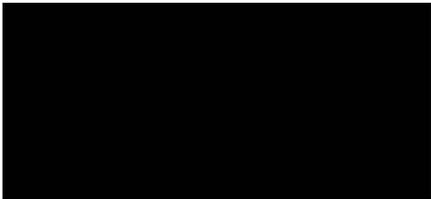
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U.S. Department of Homeland Security  
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U.S. Citizenship  
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Services

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*BB*

FILE: EAC 02 189 53146 Office: VERMONT SERVICE CENTER Date: NOV 29 2006

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: SELF-REPRESENTED

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.

*Kevin S. Porlos for*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the preference visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner is a construction company. It seeks to employ the beneficiary permanently in the United States as a construction equipment mechanic. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition.

The preference visa petition was filed on May 11, 2002.

The director issued a notice of intent to deny the petition on March 2, 2005. The director notified the petitioner that the attorney who had represented the petitioner in the preference visa proceedings had pled guilty to one count of conspiracy, four counts of money laundering, and one hundred and sixty-four counts of labor and immigration fraud. The director concluded that the petition must be denied based on a lack of evidence showing that a bona fide job offer from a U.S. employer existed and that the original labor certification be invalidated unless the petitioner provided rebuttal evidence. The director requested additional evidence from the petitioner's chief executive officer, president, owner, or other responsible officer or employee verifying that the person signing the labor certification and immigration documents was authorized to do so, including handwriting exemplars from this person, as well as other employment-related documentation. The director afforded the petitioner thirty (30) days to respond to the notice of intent to deny with additional evidence and argument.

On July 5, 2005, the director denied the petition, noting that it had not received any communication from the petitioner in response to the director's notice of intent to deny the petition. On August 8, 2005, the petitioner filed an appeal from the director's July 5, 2005, decision to deny the petition.

The regulation at 8 C.F.R. § 103.2(b)(15) provides that:

A denial due to abandonment *may not be appealed* but an applicant or petitioner may file a motion to reopen under § 103.5. Withdrawal or denial due to abandonment does not preclude the filing of a new application or petition with a new fee. However, the priority or processing date of a withdrawn or abandoned application or petition may not be applied to a later application [or] petition. Withdrawal or denial due to abandonment shall not itself affect the new proceeding; but the facts and circumstances surrounding the prior application or petition shall otherwise be material to the new application or petition. (Emphasis added.)

In this matter, the director's decision to deny the petition was based on the lack of response from the petitioner. As such the denial was based on the abandonment of the petition. As set forth above, a denial due to abandonment may not be appealed. Therefore such an appeal must be rejected.

**ORDER:** The appeal is rejected.