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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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FILE: [REDACTED]
EAC 02 002 51478

Office: VERMONT SERVICE CENTER

Date: OCT 24 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

CC: SRINIVASA R JONNALAGADDA, ESQ
1170 BROADWAY STE 601
NEW YORK, NY 10001

DISCUSSION: The employment based immigrant visa petition was denied by the Director, Vermont Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The petitioner filed a motion to reopen the AAO's decision. The petitioner then withdrew the motion. The AAO's previous dismissal will be affirmed and the petition will remain denied.

The petitioner, a software development and computer consulting service, sought to employ the beneficiary permanently in the United States as a programmer/analyst. As required by statute, the petition was accompanied by an individual labor certification approved by the Department of Labor.

On January 17, 2003, the director denied the petition. The AAO dismissed counsel's appeal¹ on January 13, 2005.

On February 16, 2005, the petitioner's president filed a "Notice of Appeal to the Board of Immigration Appeals (BIA) from a Decision of an INS Officer" (Form EOIR-29), along with attached documents indicating that he was disputing the decision to deny the preference petition based on the employer's inability to pay the proffered wage.

By correspondence dated July 13, 2005, states that the beneficiary is seeking permanent status as a dependent of her spouse, and requested that the appeal in the instant matter be withdrawn.

As the AAO had already dismissed the appeal on January 13, 2005, the AAO interprets February 16, 2005, "notice of appeal" as a motion to reopen this decision and request further review. His subsequent correspondence requesting a withdrawal of the appeal will be received as a withdrawal of his motion to reopen.

ORDER: Based on the petitioner's withdrawal of his motion to reopen, the previous decision of the AAO to dismiss the appeal is affirmed and the petition remains denied.

¹ In the instant matter, the petitioner will be treated as representing itself, as counsel did not file the documents submitted after the AAO's, January 13, 2005, decision. A copy of this decision will be provided to counsel.