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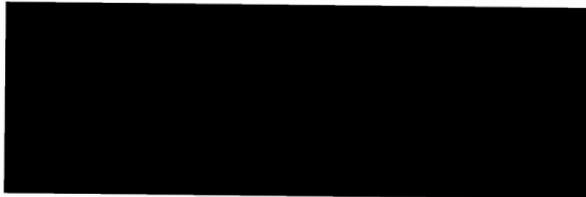
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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

B6



FILE:



Office: CALIFORNIA SERVICE CENTER

Date: OCT 26 2008

WAC-04-062-50541

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:

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

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

The petitioner is a swimwear manufacturer and seeks to employ the beneficiary permanently in the United States as a sewing machine repairer ("Industrial Sewing Machines Mechanic") as a skilled worker pursuant to Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i). On April 1, 2005, the director denied the petition based on his determination that the petitioner had abandoned the petition by failing to submit the documentation in response to the Service Center's issued request for additional evidence ("RFE").

On appeal, the petitioner argues that it did not receive the RFE. Further, the petitioner provided that its business is located in a facility with other businesses, and when the regular assigned U.S. Post Office worker is not working, the petitioner's mail is sometimes delivered to the other businesses. The petitioner was unable to provide evidence that this was definitively the case. The RFE in the record of proceeding reflects the petitioner's address listed on the filed Form I-140. The petitioner requests that the Service Center reconsider its decision and to allow the petitioner to continue processing the instant petition.

Attached to the Service Center decision, the director provided the petitioner information related to Motions to Reopen based on an Abandonment denial. The information first 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(a)(2). The director further sets forth the criteria that the petitioner would need to establish to successfully reopen the petition.

As a denial due to abandonment may not be appealed, this office has no jurisdiction over the instant appeal. Rather, as 8 C.F.R. § 103.5(a)(2) provides, denials due to abandonment may be challenged in a motion to reopen before the office that rendered the decision based on limited arguments. Alternatively, the petitioner may file a new application or petition with fee.

**ORDER:** The appeal is rejected.