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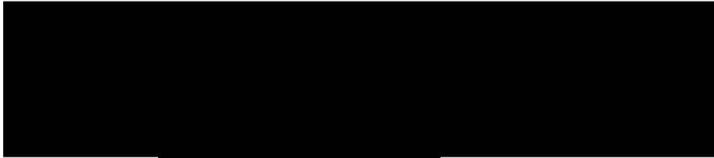
U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
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Office: VERMONT SERVICE CENTER

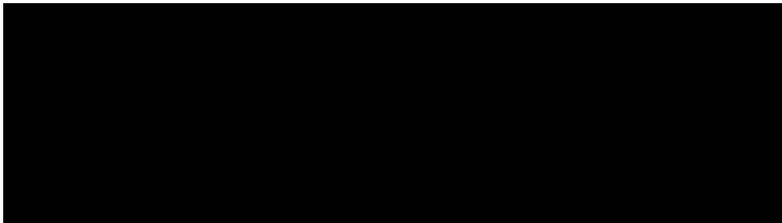
Date: JAN 30 2007

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, 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 medical practice. It seeks to employ the beneficiary permanently in the United States as a cardiologist. 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 January 7, 2003 with a priority date of March 5, 2002. The petition was approved on April 14, 2003.

The director issued a notice of intent to revoke the petition on September 26, 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 revoked 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 revoke with additional evidence and argument.

On December 8, 2005, the director revoked the petition, noting that it had not received any communication from the petitioner in response to the director's notice of intent to revoke the petition. On January 10, 2006, the petitioner filed an appeal from the director's December 8, 2005, decision to revoke the petition.

It is noted that the director properly gave notice to the petitioner that it had 15 days to file the appeal. Although counsel dated the appeal January 9, 2006, it was received by Citizenship and Immigration Services (CIS) on January 10, 2006, or 33 days after the decision was issued. Appeals on decisions to revoke a petitioner's approval must be made within 15 days after service of the decision or 18 days if the decision is mailed. *See* 8 C.F.R. § 205.2(d). Accordingly, the appeal was untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

As the appeal was untimely filed, the appeal must be rejected.¹

¹ It is noted that even if the appeal was not rejected as being untimely, it would have been rejected as being abandoned.

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

ORDER: The appeal is rejected.

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 revoke the petition was based on the lack of response from the petitioner. As such the revocation 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.