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U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date:

JUL 25

EAC 02 223 53041

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

CC: HARTE PEARY STAFFORD  
4720 MONTGOMERY LANE, STE. 410  
BETHESDA, MD 20814

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.<sup>1</sup>

The record of proceeding contains a properly executed Form G-28 signed by the beneficiary of the petition and his counsel. CIS regulations specifically prohibit a beneficiary of a visa petition, or a representative acting on a beneficiary's behalf, from filing an appeal. 8 C.F.R. § 103.3(a)(1)(iii)(B). The beneficiary is not an affected party entitled to file an appeal. Therefore, the petitioner will be considered self-represented. A courtesy copy of the decision will be forwarded to new counsel since he filed the appeal. It is noted that an appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. 8 C.F.R. 103.3(a)(2)(v)(A). For this reason, the appeal must be rejected.

Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a foreign food specialty cook. The director determined that the petitioner did not respond to a request for evidence. The director denied the petition accordingly.

On the appeal form counsel indicated that a brief or additional evidence would be submitted within 30 days. The record does not contain the brief or any additional evidence. Subsequently, this office sent a fax to counsel,

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<sup>1</sup> In addition to being rejected as abandoned, the appeal could also have been summarily dismissed. On the appeal Form I-290B in the section reserved for the basis of the appeal, counsel inserted:

Lack of Notice: Neither Attorney nor petitioner ever received any RFE relating to the I-140.  
See attached letters.

It is noted that counsel submitted a printout from the U.S. Citizenship and Immigration Services website that states that that "our last written notice in this case was returned as undeliverable by the post office on August 30, 2005." The address on the request for evidence was identical to that given for the petitioner on the Form I-140.

Counsel's statement on appeal contains no specific assignment of error. Alleging that the director erred in some unspecified way is an insufficient basis for an appeal.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

Counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal and the appeal could have been summarily dismissed. In addition, counsel has failed to ask that the request for evidence be resent to himself and the petitioner (even though he determined that the request for evidence was returned to CIS as undeliverable before he filed the appeal) or to provide any additional evidence on motion to the director or on appeal to the AAO that would clarify the issues presented in the director's request for evidence.

inquiring after the promised brief or evidence. In response to the fax, counsel stated that he did not file a brief or evidence in support of the appeal. 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.<sup>2</sup> As set forth above, a denial due to abandonment may not be appealed. For this additional reason, the appeal must be rejected.

**ORDER:** The appeal is rejected.

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<sup>2</sup> It is noted that counsel submitted a U.S. Postal Service certified mail receipt, dated October 14, 2005. However the letter accompanying the receipt contains information regarding a response to a request for evidence concerning Form I-765, EAC 03-058-56062, and not to the request for evidence concerning the Form I-140, Immigrant Petition for Alien Worker.