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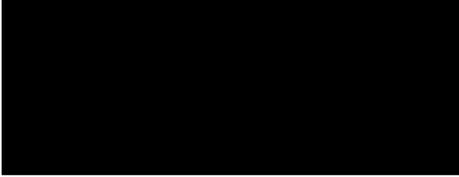
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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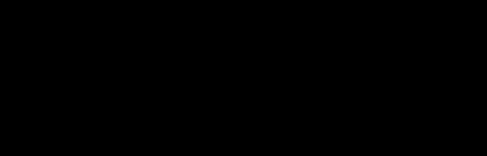


FILE: WAC 02 034 56326 Office: CALIFORNIA SERVICE CENTER Date: **SEP 14 2007**

IN RE: Petitioner:   
Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administration Appeals Office (AAO). The appeal will be rejected.

The petitioner manufactures apparel, employs 300 personnel, and claimed an approximate gross annual income of \$17 million when the petition was filed. It seeks to employ the beneficiary as a "psychologist-personnel" in personnel administration. Accordingly the petitioner endeavors to classify the beneficiary as a nonimmigrant in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

On December 5, 2001, the director requested evidence that the beneficiary had obtained a California psychologist license or evidence that the beneficiary could practice the profession without a license. On February 13, 2002, as the petitioner failed to submit the requested evidence, the director denied the petition for abandonment, pursuant to 8 C.F.R. § 103.2(b)(13). The director informed the petitioner that a denial for abandonment could not be appealed but that a motion to reopen in accordance with 8 C.F.R. § 103.5(a)(2) demonstrating Citizenship and Immigration Services (CIS) error could be filed within 30 days.

Counsel for the petitioner submitted a Form I-290B, Notice of Appeal, received by CIS on March 18, 2002, within the 33-day time restriction for decisions that are mailed. The Form I-290B indicated that a brief and/or evidence would be sent to the AAO within 30 days, and stated that CIS erred when requiring the individual in the proffered position to have a state license and that the requested evidence was not material to the matter. Counsel submitted an appeal brief addressed to the AAO and date-stamped received by the AAO on April 16, 2002. On June 26, 2002, the director, apparently considering the Form I-290B, as a motion, dismissed the motion as untimely filed.

On July 31, 2002, counsel for the petitioner submitted a motion to reconsider the director's dismissal of the March 18, 2002 motion and the director improperly forwarded the matter to the AAO for consideration as an appeal. As the AAO is without jurisdiction in the matter, the file was returned to the director for a decision on the motion. On September 25, 2006, the director in this matter determined that the petitioner's counsel was correct when asserting the March 18, 2002 motion was timely filed and forwarded the matter to the AAO once again for its decision.

The director's decision of September 25, 2006 reopened his previous decision dismissing the petitioner's Form I-290B as untimely and forwarded the record to the AAO to consider the originally filed Form I-290B. The AAO, however, still does not have a decision from the director that falls within its jurisdiction. The regulations provide that no appeal lies from the denial of a petition for abandonment. *See* 8 C.F.R. § 103.2(b)(15). As the petitioner may not appeal the director's denial based on a determination of abandonment, the appeal must be rejected.

**ORDER:** The appeal is rejected.