

**PUBLIC COPY**

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
BCIS, AAO, 20 Mass, 3/F  
Washington, D.C. 20536

File: LIN 01 161 54626

Office: NEBRASKA SERVICE CENTER Date:

**MAY 10 2003**

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:

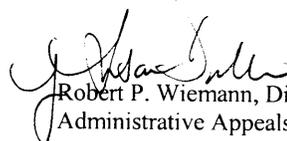
INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

The petitioner is an eye center with eight employees and a stated gross annual income of \$400,000. The petitioner seeks to employ the beneficiary as an optical research associate for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

Pursuant to 8 C.F.R. § 103.2(b)(13), if a petitioner does not submit all requested initial evidence and requested additional evidence by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied.

Pursuant to 8 C.F.R. § 103.2(b)(15), a denial due to abandonment may not be appealed.

On September 21, 2001, the director issued a notice informing the petitioner of his intent to deny the petition and the reasons therefore, and requested additional evidence in support of the petition. The petitioner failed to respond to the notice. On December 12, 2001, the director denied the petition because the petitioner had failed to respond to the notice of intent to deny and had, therefore, abandoned the petition.

On January 15, 2002, the petitioner filed an appeal to the denial of the petition. As the petition has been abandoned, the appeal must be rejected pursuant to 8 C.F.R. 103.2(b)(15).

**ORDER:** The appeal is rejected.