

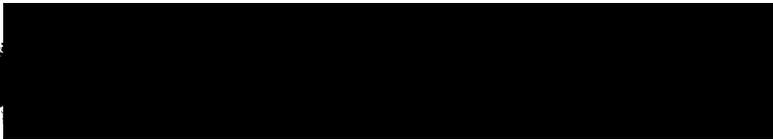


U.S. Citizenship
and Immigration
Services



FILE: WAC 01 222 54608 Office: CALIFORNIA SERVICE CENTER Date:

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:

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.

A handwritten signature in cursive script that reads "Mari Johnson".

Handwritten initials "Go" followed by the typed name and title: Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the California Service Center denied the nonimmigrant visa petition. The AAO subsequently remanded the case to the director for entry of a new decision. The director affirmed his denial and certified his decision to the Administrative Appeals Office (AAO). The director's decision will be affirmed. The petition will be denied.

The director found that the record was insufficient to make a determination regarding whether the proffered position was a specialty occupation, because the petitioner failed to respond to two requests for evidence. Upon remand of the case by the AAO, the director sent the petitioner a request for evidence on October 31, 2002, and again on March 31, 2003. The petitioner did not respond to either request; thus, pursuant to 8 C.F.R. §103.2(b)(13), the petition was considered abandoned. Therefore, the director affirmed his decision to deny the petition.

The AAO concurs with the director's decision to deny the petition. The regulations at 8 C.F.R. §103.2(b)(13) state: "If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied." The petitioner's failure to respond to two separate requests for evidence constitutes abandonment of the petition. Moreover, the AAO notes that 8 C.F.R. § 103.2(a)(15) provides:

A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under § 103.5.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The director's June 4, 2003 decision is affirmed. The petition is denied.