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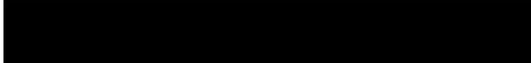
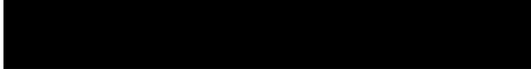
U.S. Citizenship
and Immigration
Services

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FILE: SRC 02 219 50978 Office: TEXAS SERVICE CENTER Date: **JUL 23 2004**

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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner is a restaurant that seeks to employ the beneficiary as an operations research analyst. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker 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). The director denied the petition due to abandonment.

The director stated that the service center did not receive the petitioner's response to the director's request for evidence; thus, pursuant to 8 C.F.R. § 103.2(b)(13), the petition was considered abandoned. On appeal, counsel submits evidence that the petitioner responded in a timely manner to the request for evidence. Counsel attaches copies of the materials submitted in response to the request for evidence. The matter is remanded to the director in order to afford the director the opportunity to consider the petitioner's response to the request for evidence. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision of June 16, 2003 is withdrawn. The petition is remanded to the director for entry of a new decision.