



U.S. Citizenship  
and Immigration  
Services

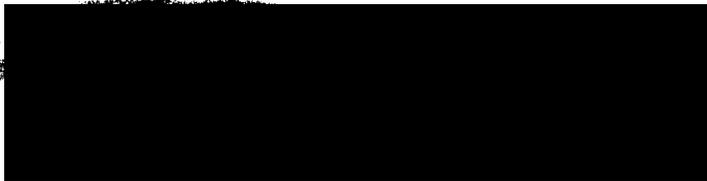


FILE: SRC 02 239 51884 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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.

A handwritten signature in cursive script, appearing to read "Maurice Johnson".

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 appeal will be dismissed. The petition will be denied.

The petitioner is a snack food company that seeks to employ the beneficiary as a specialty foreign food chef/food service manager. 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 because the petitioner did not respond to the director's request for evidence, and the petition was considered abandoned.

On appeal, counsel submits a letter and evidence showing that a response was received by Citizenship and Immigration Services (CIS) on March 18, 2003.

The director's request for evidence is dated December 16, 2002. The petitioner was given 12 weeks to respond, which would have been March 10, 2003. With an additional three days allowed for mailing time, the deadline for submitting a response was March 13, 2003. The petitioner's response was received March 18, 2003, five days late. The regulations state, "[T]he applicant or petitioner shall be given 12 weeks to respond to a request for evidence. Additional time may not be granted." 8 C.F.R. § 103.2(b)(8).

The petitioner has not established that it filed its response in a timely manner. Accordingly, the AAO shall not disturb the director's denial of the petition.

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 appeal is dismissed. The petition is denied.