



U.S. Citizenship
and Immigration
Services



FILE: SRC 02 084 52032 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.

Robert P. Wiemann, Director
Administrative Appeals Office

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protect security and to prevent
invasion of personal privacy

10/13/09 10:10:10 AM

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 rejected.

The petitioner is an electrical and construction design company that seeks to employ the beneficiary as a technical 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 issued a request for additional evidence from the petitioner asking for a complete and certified labor condition application (LCA). The request was sent to counsel for the petitioner via fax on June 25, 2002. No response was received; therefore the director denied the petition. On appeal, counsel submits a copy of an LCA that was certified by the Department of Labor on January 16, 2002, and asserts that, “[a]ccording to our fax log,” the certified LCA was timely submitted in response to the RFE. However, counsel did not provide a copy of his fax log demonstrating that the certified LCA was timely submitted.

The regulation at 8 C.F.R. § 103.2(b)(13) provides that if all requested initial evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(15) provides that a denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under 8 C.F.R. § 103.5.

As the director denied the petition due to abandonment, the decision was not properly appealed and must be rejected.

ORDER: The appeal is rejected.