

Security and Information

U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

[Handwritten signature]

[Redacted]

FILE: WAC 02 155 51276 Office: CALIFORNIA SERVICE CENTER Date: JUN 16 2004

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:

[Redacted]

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 appeal will be rejected.

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 determined that the petitioner had abandoned his petition by failing to submit the documentation requested in the request for additional evidence.

On appeal, counsel states that in response to the request for evidence, he requested additional time in which to submit the requested labor condition application (LCA); however, pursuant to 8 C.F.R. § 103.2(b)(8), additional time in which to submit requested documentation may not be granted.

While the director advised the petitioner that he could file an appeal, 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

Therefore, this office has no jurisdiction over the instant appeal. Rather, 8 C.F.R. § 103.5(a)(2) provides that denials due to abandonment may be challenged in a motion to reopen before the office that rendered the decision based on limited arguments.

ORDER: The appeal is rejected.