



U.S. Citizenship  
and Immigration  
Services

*[Handwritten signature]*

[Redacted]

FILE: SRC 01 031 51098 Office: TEXAS SERVICE CENTER Date: JUN 18 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.

*[Handwritten signature]*

For Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The record contains a letter to counsel, dated January 19, 2001, which requested further evidence with regard to the petitioner's I-129 petition. On August 15, 2001, the director sent a letter to counsel informing him that that, during the twelve week response period outlined in 8 C.F.R. § 103.2(b)(8), the service center had not received any information in response to the January 19, 2001 letter. The director determined that the petition had been abandoned and denied the petition.

On August 21, 2001, counsel submitted a Form I-290B that stated, "The Notice of Decision referred to herein [that is, the director's letter of August 15, 2001] was received in this office on August 20, 2001 although the decision was dated August 1, 2001." The Form I-290B also requested a 60 day extension, as counsel intended "to submit a Motion to Reopen and Reconsider with the evidence requested."

The regulation at 8 C.F.R. 103.2(b)(15) states, in pertinent part: "*Effect of withdrawal or denial due to abandonment. . . . A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under § 103.5*" Pursuant to 8 C.F.R. § 103.5(a)(2), a motion to reopen an application or petition denied due to abandonment must be filed with evidence that the decision was in error because:

- (i) The requested evidence was not material to the issue of eligibility;
- (ii) The required initial evidence was submitted with the application or petition, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or
- (iii) The request for additional information or appearance was sent to an address other than that on the application, petition, or notice of representation, or that the applicant or petitioner advised the Service, in writing, of a change of address or change of representation subsequent to filing and before the Service's request was sent, and the request did not go to the new address.

The regulation at 8 C.F.R. § 103.5(a)(1)(ii) states that the official having jurisdiction on such a motion is the official who made the latest decision in the proceeding unless the affected party moves to a new jurisdiction. In the instant petition, the service center director retains jurisdiction to review the motion to reopen and decide on its merits. The regulation cited above with regard to abandoned petitions precludes the AAO from considering the appeal in the instant petition.

**ORDER:** The appeal is rejected.