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U.S. Citizenship  
and Immigration  
Services

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DQ

MAY 06 2004



FILE: EAC 02 238 52982 Office: VERMONT SERVICE CENTER Date:

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:

SELF-REPRESENTED

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*

Robert P. Wiemann, Director  
Administrative Appeals Office

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

The record contains a Form I-797 dated October 11, 2002, that is addressed to the petitioner. This form requests further evidence with regard to the petitioner's I-129 petition. On February 20, 2003, the director sent a letter to the petitioner that stated the service center had not received any further information from the petitioner during the twelve week response period outlined in 8 C.F.R. § 103.2(b)(8). The director determined that the petition had been abandoned and denied the petition.

The petitioner submitted a Form I-290B, dated March 25, 2003, that stated the petitioner had never received the notice requesting further evidence. The petitioner stated that she did not know the real cause for the missing notice for further evidence, and that she had never received the notice.

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.