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U.S. Citizenship  
and Immigration  
Services

*02*



FILE: EAC 01 217 51114 Office: VERMONT SERVICE CENTER

Date: SEP 04 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:



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*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the nonimmigrant visa petition, and the petitioner subsequently filed a motion to reopen. The service center director dismissed the motion, and the petitioner then filed a motion to reconsider. The director reconsidered the case based on the petitioner's second motion, but upon review of the record, the director affirmed his decision to deny the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner is a college that seeks to employ the beneficiary as an academic advisor. 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. § 1153(b)(5). The director determined that the petitioner had abandoned his petition by failing to submit the documentation requested in the request for additional evidence. If all requested initial evidence and requested additional 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)(13).

On appeal, counsel maintains that the director erred in fact in concluding that the petitioner failed to submit the requested evidence within the prescribed period of time. The AAO conducted a thorough review of the record of proceeding in the instant case. The unusual and extremely tragic events which occasioned delays in this case were taken into account in seeking the correct resolution of the procedural matters involved. The AAO notes, nevertheless, that the record does not include any substantive response or documentation in response to CIS requests for evidence. Moreover, counsel failed to submit additional evidence or a brief on appeal as indicated on the I-290B. The record is thus complete.

While the director advised the petitioner that he could file an appeal, 8 C.F.R. § 103.2(b)(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.