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U.S. Citizenship
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FILE: SRC 04 225 50910 Office: TEXAS SERVICE CENTER Date: NOV 02 2005

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: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Handwritten signature of Robert P. Wiemann in cursive.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be rejected.

The petitioner develops entertainment, recreational, and educational programs for children. It seeks to employ the beneficiary as a project manager/consultant and to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(i)(b).

The director denied the petition on the ground that the petitioner had not filed a timely response to the request for additional evidence and was therefore deemed to have abandoned the petition. The director stated that the request had been issued to the petitioner on September 24, 2004, giving him 90 days to respond, but that the service center did not receive the additional evidence until December 30, 2004, which was after the 90-day response period specified in the request.

The petitioner filed an appeal, asserting that the additional evidence was delivered to the Texas Service Center on the due date specified in the director's request for additional evidence.

Official documentation in the record shows that the director's request for additional evidence was sent to the petitioner by telefax on September 29, 2004. The petitioner was advised in the request to submit the additional evidence within 90 days, and that failure to respond "may result in your petition being abandoned and denied." The AAO notes that the 90-day response period ended on Tuesday, December 28, 2004. The petitioner has submitted case status information published on the U.S. Citizenship and Immigration Services (CIS) website confirming that the petitioner's response to the request for additional evidence was received on December 30, 2004, the date cited by the director in his decision. The petitioner asserts that the package was actually delivered on December 29, 2004, but has submitted no evidence that the package was delivered on that date. Regardless of whether the response arrived at the Texas Service Center on December 29 or 30, 2004, it was after December 28, 2004 and, therefore, did not arrive during the 90-day response period specified in the request for additional evidence.

The regulations provide as follows: "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). Furthermore, "[a] denial due to abandonment may not be appealed." 8 C.F.R. § 103.2(b)(15). The AAO is precluded from considering the instant appeal by 8 C.F.R. § 103.2(b)(15), because a denial due to abandonment is not appealable. Accordingly, the appeal must be rejected.

ORDER: The appeal is rejected.