

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



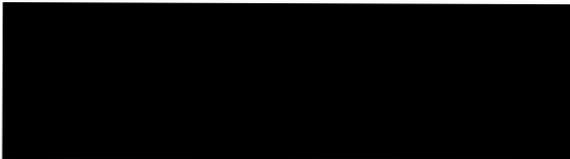
D2

FILE: EAC 04 141 53770 Office: VERMONT SERVICE CENTER Date: JAN 04 2007

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 materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter was appealed to the Administrative Appeals Office (AAO), which withdrew the director's decision and remanded the petition for entry of a new decision. The service center director denied the nonimmigrant visa petition and certified his decision to the AAO for review. The director's decision will be affirmed. The petition will be denied.

The petitioner operates a resort hotel and spa in the Catskill Mountains of New York. It seeks to employ the beneficiary as a spa director 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)(H)(i)(b).

The director denied the petition on the ground that the record failed to establish that the proffered position qualifies as a specialty occupation. On appeal the AAO determined that the proffered position is a specialty occupation, but that the record failed to establish that the beneficiary is qualified to perform services in the specialty occupation. Since the director had not addressed this issue in his decision, the AAO remanded the petition to the director with instructions to afford the petitioner reasonable time to provide evidence that the beneficiary is qualified to perform the duties of the specialty occupation, and then to render a new decision. In accordance with these instructions, the director issued a notice to counsel, with a copy to the petitioner, on July 6, 2006 advising the petitioner to submit, within 12 weeks, documentary evidence demonstrating that the beneficiary is qualified to perform services in the specialty occupation under the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(C) and (D).

The petitioner did not respond to the director's letter within 12 weeks, or at any time thereafter. On November 27, 2006 the director certified the case to the AAO for review and issued a Notice of Certification to counsel, with a copy to the petitioner. The Notice of Certification stated that the petition was considered abandoned and thereby denied in accordance with 8 C.F.R. § 103.2(b)(13). It also advised that the affected party may submit a brief to the AAO within 30 days after service of the notice. The petitioner has not responded to the Notice of Certification. Accordingly, the AAO will affirm the decision that the director certified for review, and the petition will be denied.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The director's decision of November 27, 2006 is affirmed. The petition is denied.