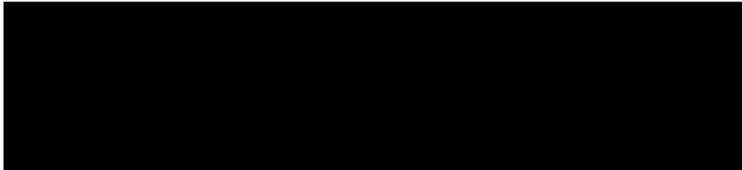




U.S. Citizenship  
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prevent clearly unwarranted  
invasion of personal privacy



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FILE: WAC 04 188 50588 Office: CALIFORNIA SERVICE CENTER Date: SEP 27 2007

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The petitioner is a system integration and software development company that seeks to employ the beneficiary as a computer programmer pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

On September 21, 2004, the director requested additional evidence from the petitioner in order to establish that the position meets the criteria for a specialty occupation and that the beneficiary is qualified to perform the duties of a specialty occupation. The petitioner did not respond to the director's request for evidence. On January 18, 2005, after the petitioner failed to submit the requested evidence, the director denied the petition for abandonment, citing 8 C.F.R. § 103.2(a)(13). 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).

While the director advised the petitioner that it could file a motion to reopen based on an abandonment denial, 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.