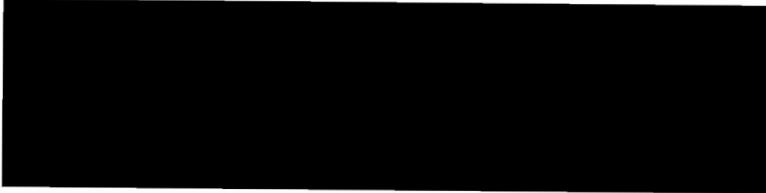


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prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

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FILE: WAC 07 004 53963 Office: CALIFORNIA SERVICE CENTER Date: **MAR 31 2008**

IN RE: Petitioner:   
Beneficiary: 

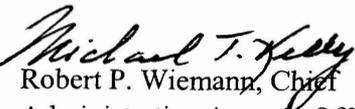
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



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.

*for*   
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The director of the 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 lumber and truss business that seeks to continue its authorization to employ the beneficiary as a part-time project manager. The petitioner, therefore, 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. § 1101(a)(15)(H)(i)(b). The director denied the petition because she could not grant an extension of time to submit evidence in response to the director's request for evidence (RFE), and thereby the director found that the petition was abandoned when the petitioner failed to submit the requested evidence.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) counsel's response to the director's request, requesting an extension to submit the requested evidence; (4) the director's denial letter; and (5) the Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before reaching its decision.

On appeal, counsel states, in part:

We mailed the requested documents, copies are hereby enclosed, in the second week of May. We cannot, however, prove delivery because it was mailed by regular mail. The Service may have received later than May 17, 2007 without a fault on our part. Therefore, we respectfully appeal the decision entered on May 17, 2007 and ask for reconsideration.

Counsel's assertions are noted. Without documentary evidence to support the claim, however, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Citizenship and Immigration Services (CIS) records reflect that the only response to the RFE, received on April 12, 2007, was a request for extension of time within which to submit required documents. The regulation at 8 C.F.R. § 103.2(b)(8) does not permit the director to extend the time within which the petitioner may submit evidence in response to the RFE. Thus, the director denied the petition for abandonment. Pursuant to 8 C.F.R. § 103.2(b)(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.

Pursuant to 8 C.F.R. § 103.2(b)(15), a denial due to abandonment cannot be appealed.

As there is no appeal from a denial due to abandonment, the appeal must be rejected.

**ORDER:** The appeal is rejected.