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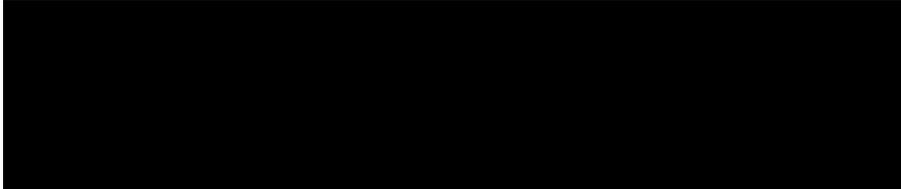
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U.S. Department of Homeland Security
20 Massachusetts Avenue, NW, Rm. A3042
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U.S. Citizenship
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Services

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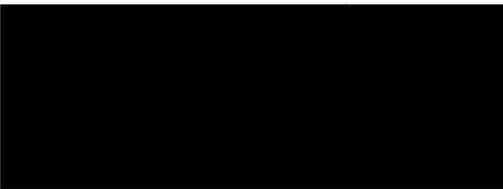


FILE: SRC 03 014 53810 Office: TEXAS SERVICE CENTER Date: **NOV 15 2005**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

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, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO remanded the matter to the director for further consideration. The director again denied the petition and certified her decision to the AAO. The director's decision will be affirmed. The petition will be denied.

The petitioner is a non-profit hospital, medical center and research institution. It seeks extension of classification of the beneficiary for a position described as a resident physician on the Form I-129, and as a Fellow in the General Dentistry and Prosthetic Fellowship Program in the accompanying documents. The director determined that the beneficiary is ineligible for H-3 classification as the regulations state that the category shall not apply to physicians.

On appeal, counsel submitted a brief stating that the director erred in her decision because the petitioner was not filing for the beneficiary to work in a position as a resident physician, but rather as a trainee in dentistry. Counsel delineated the differences in how dentists and physicians are regulated in the state of Florida, in an effort to show that a dentist would not be ineligible for H-3 classification.

The matter was remanded to the director because there was no evidence in the record that the director had issued a request for additional evidence, pursuant to 8 C.F.R. § 103.2(b)(8). There was confusion in the record regarding the exact nature of the position, and the AAO determined that the director should have requested additional evidence to clarify the matter prior to adjudicating the petition.

In addition, the director did not address whether the training program had a fixed schedule, objectives and means of evaluation or whether the beneficiary already possessed substantial training and expertise in the field of the proposed training.

Upon remand, the director issued a request for additional evidence. The petitioner did not respond to this request. If the requested "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 notice of certification, the petitioner submitted no evidence.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The director's February 11, 2005 decision is affirmed. The petition is denied.