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U.S. Citizenship
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FILE:

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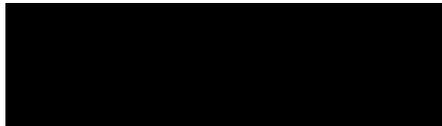
Office: TEXAS SERVICE CENTER

Date:

NOV 21 2005

IN RE:

Petitioner:
Beneficiary:



PETITION: Petition for Alien Fiancé(e) Pursuant to Section 101(a)(15)(K) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(K)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision 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 nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be rejected.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Cuba, as the fiancée of a United States citizen pursuant to section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(K).

The director, after determining that the petitioner had failed to respond to her request for evidence, denied the instant petition due to abandonment. *Decision of the Director*, dated July 26, 2004.

On appeal, the petitioner contends that he did respond to the director's notice in a timely fashion and submits documentation of the Service Center's April 2, 2004 receipt of that response. The Service Center has forwarded the petitioner's appeal to AAO.

A denial due to abandonment may not, however, be appealed. *See* 8 C.F.R. § 103.2(b)(15). Therefore, the appeal will be rejected.

However, while a denial due to abandonment may not be appealed, the petitioner may file a motion to reopen this proceeding. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the director. *See* 8 C.F.R. § 103.5(a)(1)(ii).

The petitioner may also file a new Form I-129F on behalf of the beneficiary. Withdrawal or denial due to abandonment does not preclude the filing of a new application or petition with a new fee, although the priority or processing date of a withdrawn or abandoned application or petition may not be applied to a later application or petition. Withdrawal or denial due to abandonment shall not itself affect the new proceeding; but the facts and circumstances surrounding the prior application or petition shall otherwise be material to the new application or petition. *See* 8 C.F.R. § 103.2(b)(15).

ORDER: The appeal is rejected.