



U.S. Citizenship
and Immigration
Services

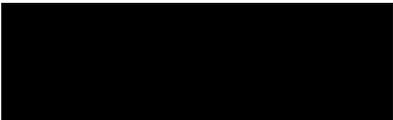
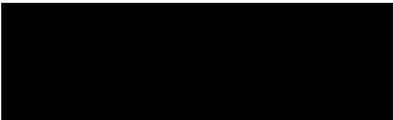
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FILE: WAC-03-135-53131 Office: CALIFORNIA SERVICE CENTER Date: **NOV 23 2005**

IN RE: Petitioner: 
Beneficiary: 

PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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

The petitioner is a garment manufacturing and printing company. It filed the I-140 petition to seek to employ the beneficiary permanently in the United States as a silk-screen printing supervisor. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor. After issuing two requests for additional evidence on June 19, 2003 and December 29, 2003 respectively, the director issued a Notice of Intent to Deny (NOID) on April 5, 2004. The NOID gave the petitioner thirty days to submit additional information, evidence or arguments to support the petition with warning that failure to respond to this request would result in the denial of the petition. However, the response to the NOID was not received by the director until May 10, 2004 despite it being due on May 5, 2004. Therefore, on June 1, 2004 the director denied the petition because the response was not received in timely manner.

The regulation at 8 C.F.R. § 103.2(b)(13) states the following: "*Effect of failure to respond to a request for evidence or appearance.* 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."

The regulations are clear that failure to respond to a request for evidence *shall* be considered abandoned and denied. Thus, the director should not have exercised favorable discretion in accepting late evidence and should have denied the petition as abandoned for failure to provide a timely response to the director's request for evidence. A denial due to abandonment may not be appealed. 8 C.F.R. § 103.2(b)(15).

It is noted that the director gave a notice to the petitioner that it could file an appeal in the instant case. Despite this, however, the AAO is never bound by a decision of a service center or district director. See *Louisiana Philharmonic Orchestra vs. INS*, 44 F. Supp. 2d 800, 803 (E.D. La. 2000), *aff'd.*, 248 F. 3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). In this case, the regulations do not provide appeal for denials due to abandonment.

ORDER: The appeal is rejected pursuant to 8 C.F.R. § 103.2(b)(15).