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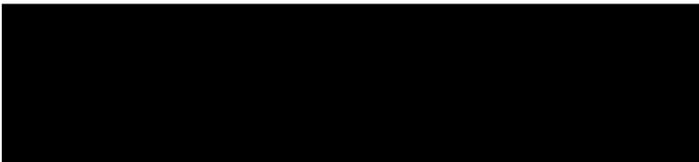
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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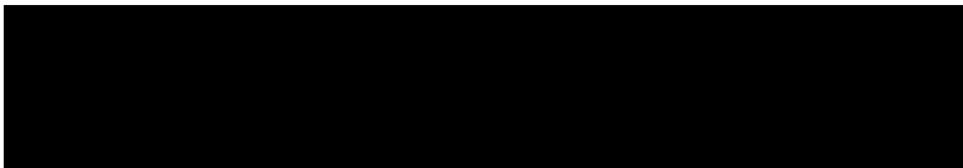
Office: TEXAS SERVICE CENTER Date: JAN 02 2008

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, Chief
Administrative Appeals Office

DISCUSSION: The director, Texas Service Center, denied the employment-based visa petition due to abandonment. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will reject the appeal and return the matter to the director as a motion to reopen.

The petitioner is a nursing recruiting agency. It seeks to employ the beneficiary permanently in the United States as a registered nurse. The petitioner asserts that the beneficiary qualifies for Schedule A, Group I labor certification pursuant to 20 C.F.R. § 656.5(a). On August 11, 2006, the director determined that the petitioner had not responded to a request for further evidence within the allotted period of 12 weeks of time, and denied the petition due to abandonment.

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.” Further, as correctly noted by the director in his initial decision, denials for abandonment cannot be appealed. 8 C.F.R. § 103.2(b)(15). However, a petitioner may file a motion to reopen under 8 C.F.R. § 103.5. 8 C.F.R. § 103.2(b)(15).

Counsel, on motion to reopen/reconsider, stated that the petitioner had responded to the director’s request for further evidence dated May 11, 2006 within the period of time allotted. Counsel noted that the petitioner was given twelve weeks to respond to the director’s request for evidence and that the deadline for submission of the response was clearly indicated as August 11, 2006. Counsel states that the petitioner submitted a timely response to the Texas Service Center on Wednesday, August 9, 2006, but that the Service Center sent back the petitioner’s response on August 14, 2006, stating that the adjudication was already completed prior to the receipt of the petitioner’s response. Counsel submitted a Track and Confirm notice from the United States Postal Service (USPS) that indicates a package arrived at the Mesquite Texas office unit on Friday, August 11, 2006, at 12:44 P.M. The postal tracking notice also indicates that a notice was left at the Mesquite, Texas office on August 11, 2007 and subsequent delivery was effected at the Mesquite, Texas office on Monday, August 14, 2006 at 6:16 A.M.

Upon review of the record, the petitioner did respond in a timely manner to the director’s request for further evidence,¹ and thus, the director should not have denied the petition based on abandonment. The petition shall be returned to the director for a consideration of the merits of the instant petition.

ORDER: The appeal is rejected. The matter is returned to the director for consideration as a motion to reopen.

¹ The AAO notes that the request for further evidence sent to the petitioner was submitted to the record by counsel on motion. At the bottom left hand side of the first page of the director’s RFE is a handwritten notation in red ink that states “deadline: 08/11/06.”