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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: EAC 07 209 52221 Office: VERMONT SERVICE CENTER Date: JUN 09 2008

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:

SELF-REPRESENTED

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 denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected, as the AAO has no jurisdiction over this matter.

The director denied the petition on September 21, 2007. Specifically, the director found that the petitioner had abandoned the petition, as it did not respond to a July 20, 2007 request for additional evidence.¹ See 8 C.F.R. § 103.2(b)(13)(i). The AAO notes that the director informed the petitioner that it was not eligible to file an appeal of his decision. Rather, as specifically noted by the director, the petitioner had limited motion rights: specifically, it was eligible to file a motion to reopen with evidence that the decision to deny the petition on the basis of abandonment was in error. See 8 C.F.R. § 103.2(b)(15).

Despite the director's notice to the petitioner that it was not eligible to file an appeal, and his specific instructions on how to properly file a motion to reopen, the petitioner elected nonetheless to file an appeal.² The regulation at 8 C.F.R. § 103.2(b)(15) specifically states that when a petition is denied due to abandonment, the petitioner may not file an appeal. The petitioner may, however, file a motion to reopen under 8 C.F.R. § 103.5. Pursuant to 8 C.F.R. § 103.5, the official having jurisdiction over a motion to reopen is the official who made the last decision in the proceeding, in this case the service center director. The AAO, therefore, has no jurisdiction over this matter.

As the AAO has no jurisdiction over this matter, the appeal must be rejected.

ORDER: The appeal is rejected.

¹ The record indicates that the director's request for additional evidence (RFE) was mailed to the petitioner's address of record on July 20, 2007 (a new address is provided on appeal). It was faxed to the number provided on the Form I-907 the same day. The fax transmission, however, failed. A second attempt at transmitting the RFE via fax on July 20, 2007 also failed. In its August 27, 2007 letter, the petitioner provided a new fax number. The director faxed the RFE to that number on August 27, 2007, but the transmission failed. In its August 28, 2007 letter, faxed to the director on August 29, 2007, the petitioner stated that its prior letter had provided an erroneous number, and provided a third fax number. The director faxed the RFE to this number on August 29, 2007, and three pages (the cover letter and two-page request for additional evidence) were, according to the transmission report, successfully transmitted.

² The petitioner specifically noted on the Form I-290B that it was not filing a motion; it was filing an appeal.