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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: APR 15 2009
SRC 07 800 23122

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition for abandonment. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected. The AAO will return the matter to the director for consideration.

The petitioner filed the Form I-140 petition electronically on July 26, 2007. The instructions for electronic filing provide that the initial evidence, including the original alien employment certification, must be received by the Service Center within seven days of electronic filing. On April 4, 2008, the director denied the petition for abandonment, stating that the petitioner had not submitted the initial evidence.

On appeal, counsel asserts that the initial evidence was, in fact, submitted in the same package as the alien's Form I-485 Application to Register Permanent Residence or Adjust Status, and submits the FedEx tracking results showing this evidence was received by the Service Center on July 27, 2007. We note that the record contains evidence relating to the Form I-140 petition, including the original ETA Form 9089 alien employment certification.

The regulation at 8 C.F.R. § 103.2(b)(15) provides that a denial due to abandonment may not be appealed but a petitioner may file a motion to reopen such a decision pursuant to 8 C.F.R. § 103.5. The regulation at 8 C.F.R. § 103.5(a)(2) provides that a motion to reopen a denial due to abandonment must be filed with evidence that the decision was in error because:

- (i) The requested evidence was not material to the issue of eligibility;
- (ii) The requested initial evidence was submitted with the application or petition, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or
- (iii) The request for additional information or appearance was sent to an address other than that on the application, petition, or notice of representation, or that the applicant or petitioner advised the Service, in writing, of a change of address or change of representation subsequent to filing and before the Service's request was sent, and the request did not go to the new address.

Counsel, however, checked the box on the Form I-290B indicating that the filing was an appeal. As such, the appeal must be rejected. The director, however, may consider reopening the matter on his own motion.

ORDER: The appeal is rejected. The matter is returned to the director to consider reopening the matter on his own motion.