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U.S. Citizenship
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FILE: SRC 03 067 51879 Office: TEXAS SERVICE CENTER Date: **MAY 16 2006**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as an Other, Unskilled Worker Pursuant to § 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 preference visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO). The appeal will be rejected. The petition is being returned to the director.

The petitioner is a household. It seeks to employ the beneficiary permanently in the United States as a household worker. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the U. S. Department of Labor. The director denied the petition on June 18, 2004 for abandonment. An appeal was sent in on July 15, 2004. There were two date stamps on the Form I-290B. The appeal was considered late, and reviewed as a motion to reopen/reconsider the denial. On February 7, 2005, the director reopened the petition and sent it to the AAO.

Request for additional evidence were issued in this matter on September 16, 2003, and February 18, 2004. Pursuant to 8 C.F.R. § 103.2(b)(13), the petitioner was obliged to respond to those requests. That section states that, in the event that a petitioner does not respond to such a notice, the petition shall be considered abandoned and shall be denied. The director found that the petitioner had not responded and denied the petition.

A denial for abandonment cannot be appealed under the regulation (8 C.F.R. § 103.2(b)(13)). Since counsel is asserting that the request for evidence went to the wrong party, the record is being returned to the director to be treated as a motion and adjudicated as such.

The AAO determines that the director should reexamine the instant petition.

ORDER: The appeal is rejected.