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



U.S. Citizenship
and Immigration
Services

B6

FILE:

[REDACTED]
SRC-07-157-51814

Office: TEXAS SERVICE CENTER

Date: MAR 17 2009

IN RE:

Petitioner:
Beneficiary:

[REDACTED]

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:

[REDACTED]

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.

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The petitioner is a newspaper publisher. It filed the I-140 petition to seek to employ the beneficiary permanently in the United States as a chief correspondent. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor. Upon review of the petition, the director determined that the evidence submitted was not sufficient to warrant a favorable decision and accordingly issued a request for additional evidence (RFE) on September 22, 2007. The RFE gave the petitioner 12 weeks to submit the requested documents. The director had not received the requested documents from the petitioner since then. Therefore, on November 1, 2007 the director denied the petition as abandoned.

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 properly denied the petition as abandoned for failure to provide a timely response to the director’s RFE.

The AAO notes that the director informed the petitioner that there is no appeal from his decision and that a motion to reopen may be submitted within 30 days. On the Form I-290B, counsel clearly indicates that he is filing an appeal. A denial due to abandonment may not be appealed. 8 C.F.R. § 103.2(b)(15). Accordingly, the appeal will be rejected.

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