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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

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MAY 13 2009

FILE:

[REDACTED]
SRC 07135 52731

Office: TEXAS SERVICE CENTER

Date:

IN RE:

Petitioner: [REDACTED]

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)

IN 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 preference visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected pursuant to 8 C.F.R. §§ 103.2(b)(15) and 103.3.

The petitioner is a machine tool manufacturing company. It seeks to employ the beneficiary permanently in the United States as a manufacturing engineer.

On January 28, 2008, the director summarily denied the petition due to abandonment, because the petitioner failed to respond to a request for evidence by the date specified in the request, i.e., within 12 weeks. 8 C.F.R. § 103.2(b)(13). The director stated in his decision that, while there is no right to an appeal from an abandonment denial, the petitioner may, *inter alia*, file a motion with U.S. Citizenship and Immigration Services (USCIS). The official having jurisdiction over a motion is the official who made the latest decision in the proceeding, i.e., the Texas Service Center director. 8 C.F.R. § 103.5(a)(ii).

Nevertheless, on February 25, 2008, the petitioner filed a Form I-290B, Notice of Appeal or Motion, and indicated in Part 2 that it is "filing an appeal." The petitioner did not file a motion. However, as correctly noted by the director, the petitioner may not appeal a denial due to abandonment. 8 C.F.R. § 103.2(b)(15). Accordingly, the AAO must reject the appeal for lack of jurisdiction. *See* 8 C.F.R. § 103.3.

ORDER: The appeal is rejected.