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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

B6



FILE:



Office: NEBRASKA SERVICE CENTER

Date FEB 18 2010

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IN RE:

Petitioner:



Beneficiary:

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:



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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner is in the automobile repair business. It seeks to employ the beneficiary permanently in the United States as an auto mechanic. The director denied the petition because the petitioner had failed to respond to a Request for Evidence issued on June 12, 2007. The regulation at 8 C.F.R. § 103.2(b)(13)(i) states, in pertinent part:

Failure to submit evidence or respond to a notice of intent to deny. If the petitioner or applicant fails to respond to a request for evidence or to a notice of intent to deny by the required date, the application or petition may be summarily dismissed as abandoned, denied based on the record, or denied for both reasons.

The regulation at 8 C.F.R. § 103.2(b)(15) states:

Effect of withdrawal or denial due to abandonment. . . . A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under § 103.5.

As noted above, the petitioner failed to submit a timely response to the request for evidence issued by the director, and the director, pursuant to 8 C.F.R. §103.2(b)(13), denied the petition due to abandonment. Because a denial due to abandonment cannot be appealed to the AAO, the present appeal must be rejected for lack of jurisdiction. *See* 8 C.F.R. § 103.3.

ORDER: The appeal is rejected.