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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:



Office: TEXAS SERVICE CENTER

Date:

JUL 28 2010

IN RE:

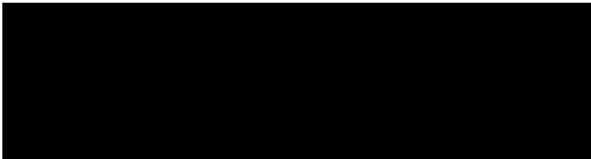
Petitioner:

Beneficiary:



PETITION: Immigrant petition for Alien Worker as an Other, Unskilled Worker pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Berry Rhew
Chief, Administrative Appeals Office

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

The petitioner is a dry cleaners. It seeks to classify the beneficiary as an alien worker pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3), as an other, unskilled worker. The director determined that the petitioner had abandoned the petition by failing to respond or submit the documentation requested in the request for additional evidence (RFE).

On appeal, counsel states that the director erred in denying the petition and failed to properly consider the evidence submitted. Counsel does not assert that he or the petitioner responded to the RFE. Counsel stated on the Form I-290B that a brief and supporting evidence would be filed within 30 days. The appeal was filed on July 13, 2009.

The regulation at 8 C.F.R. § 103.2(b)(15) provides: "A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under § 103.5."

Therefore, this office has no jurisdiction over the instant appeal. Rather, 8 C.F.R. § 103.5(a)(2) provides that denials due to abandonment may be challenged in a motion to reopen before the office that rendered the decision based on limited arguments.

ORDER: The appeal is rejected.