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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



B6

DATE: **JUL 20 2012** OFFICE: NEBRASKA SERVICE CENTER FILE:

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:

SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Chinese restaurant. It seeks to employ the beneficiary permanently in the United States as a Head Chinese Pastry and Dim Sum Cook. The petitioner 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 a skilled worker or professional. The director determined that the petitioner had abandoned the instant petition due to its lack of response to the director's Notice of Intent to Deny (NOID), dated March 27, 2009. The director also determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition and denied the petition accordingly.

Review of U.S. Citizenship and Immigration Services (USCIS) records indicates that, subsequent to filing the instant petition, the alien was admitted as a lawful permanent resident on April 1, 2012, and had a permanent resident card produced, receipt number SRC-12-141-51423. Because the alien has lawful permanent resident status, further pursuit of the matter at hand is moot.¹

ORDER: The appeal is dismissed based on the alien's lawful permanent resident status.

¹ Even if this were not the case, the AAO would not have jurisdiction over this matter. 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." The director denied the instant petition due to abandonment because the petitioner did not respond to the director's NOID, dated March 27, 2009. Therefore, this office has no jurisdiction over the instant appeal. Furthermore, the record does not contain any evidence that the petitioner submitted a response to the director's NOID as indicated by the petitioner on appeal. The petitioner states that as part of its response to the director's NOID, it submitted its tax return for 2007, but the record does not contain this evidence.