

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



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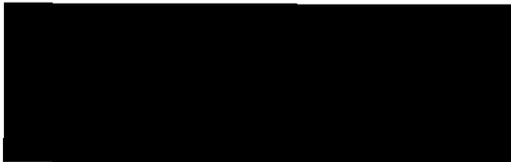
Date: NOV 29 2012 Office: TEXAS SERVICE CENTER

FILE:

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner is a landscaping company that is seeking to permanently employ the beneficiary in the United States as a first line supervisor/manager pursuant to Section 203(b)(3)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii). The director determined that the petitioner had abandoned the Form I-140, Immigrant Petition for Alien Worker, by failing to submit a response to a Notice of Intent to Deny (NOID) issued on August 1, 2011. Therefore, the director denied the petition based upon its abandonment in a Notice of Denial (NOD) issued on September 29, 2011.

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." Further, 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.

The record shows that the petitioner's counsel filed a Form I-290B, Notice of Appeal or Motion, on October 26, 2011, as an appeal by checking the box at part 2.A., of the Form I-290B, which specifically states "I am filing an appeal. My brief and/or additional evidence is attached." However, as the denial of the petition was based upon its abandonment and such a denial may not be appealed pursuant to 8 C.F.R. § 103.2(b)(15), the AAO has no jurisdiction over the instant appeal and the appeal must be rejected on this basis.

Therefore, as the appeal was not properly filed, it will be rejected.

ORDER: The appeal is rejected.