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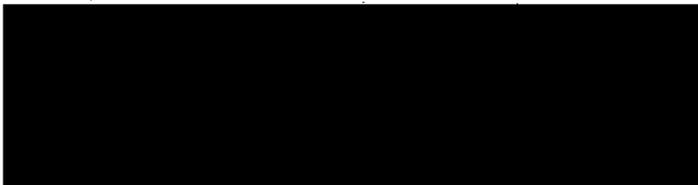


FILE: WAC 03 170 51998 Office: CALIFORNIA SERVICE CENTER Date: DEC 05 2006

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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.

*for Michael T. Kelly*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The director of the California Service Center director denied the nonimmigrant visa petition. The petitioner appealed the director's denial to the Administrative Appeals Office (AAO) and the AAO remanded the matter to the director for entry of a new decision. The director issued a notice of intent to deny. The petitioner did not respond. The director denied the petition and certified his decision to the AAO. The director's decision will be affirmed. The petition will be denied.

The petitioner is wholesale distributor of auto parts, with eight employees. It seeks to employ the beneficiary as a market research analyst pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition due to abandonment, based on the petitioner's failure to respond to the notice of intent to deny.

On May 2, 2006, the AAO remanded the instant petition to the director for a decision as to whether the duties of the proffered position of market research analyst establish it as a specialty occupation under one of the alternate criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director considered the evidence of record and on June 26, 2006 issued a notice of intent to deny, giving the petitioner 30 days in which to respond. 8 C.F.R. § 214.2(h)(10)(ii). As the petitioner did not submit a response within the allotted time period, the director denied the Form I-129 due to abandonment. *See* 8 C.F.R. § 103.2(b)(13).

The record confirms that the director issued the notice of intent to deny on June 26, 2006 and there is no evidence that the petitioner responded to this notice during the 30-day period established by the director. The record does not contain a motion to reopen submitted in response to the director's denial indicating that the notice was not received by the petitioner. *See* 8 C.F.R. § 103.5(a)(2). Accordingly, the director's denial of the petition due to abandonment will be affirmed. The petition will be denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The director's September 25, 2006 decision is affirmed. The petition is denied.