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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  
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: OCT 05 2010

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:

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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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,

*for Michael T. Kelly*  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the service center director and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the petition summarily denied based on abandonment.

The petitioner describes itself as a church that seeks to employ the beneficiary as the musical director of a family worship center. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation 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 because the petitioner failed to establish that the proffered position is a specialty occupation.

On appeal, the petitioner submitted a brief along with an affidavit from another church's employee, [REDACTED] the Director of Worship and Arts and Technology, whom the petitioner claims is employed in a similar position to that offered to the beneficiary. However, as the AAO required additional evidence to determine whether the proffered position is a specialty occupation, the AAO issued a request for additional evidence (RFE) on August 5, 2010. Specifically, the AAO requested the following:

1. Copies of [REDACTED] bachelor's degree and/or transcripts, demonstrating in which field his degree was obtained;
2. A more detailed description of the petitioner's ministry, including the number of parishioners, the role of the Music and Media Ministries as listed in your organization chart, and the numbers of musicians, singers, choral and instrumental groups, audio engineers, and video recorder/editors whom the beneficiary would be responsible for overseeing;
3. A more detailed position description, including a list of the day-to-day duties to be performed by the beneficiary in the proffered position, with the amount of hours he is expected to spend in each on a weekly basis;
4. A clarification of the meaning of an "[e]quivalent associate's degree in Music" as stated in the list of job requirements the petitioner provided in response to the RFE;
5. An explanation of whether the proffered position is a newly created position or whether it has been held by someone else previously – if the latter, please provide the name of the person(s) previously holding this position along with copies of his or her degree(s) and/or transcripts evidencing the degree held (including the field in which the degree(s) were obtained); and
6. Any other documentation or evidence demonstrating that the proffered position is a specialty occupation requiring a theoretical and practical application of a body of highly specialized knowledge and at least a bachelor's degree or its equivalent *in a specific specialty*, which could include expert opinions or other evidence that the proffered position is so complex or unique that it can be performed only by an individual with a degree, and/or documentation from other employers similar to the petitioner evidencing that they commonly require a bachelor's degree in music for positions similar to that proffered.

The AAO gave the petitioner 30 days, plus three days for service by mail, in which to respond to this notice. Since the RFE was issued on August 5, 2010, this means the petitioner should have responded no later than September 7, 2010. As of the date of this decision, the petitioner and counsel have failed to respond.

[REDACTED]  
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As the petitioner and counsel failed to respond to the RFE, the appeal will be dismissed and the petition will be summarily denied as abandoned under 8 C.F.R. § 103.2(b)(13)(i).

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

**ORDER:** The appeal is dismissed and the petition summarily denied for abandonment.

[REDACTED]