

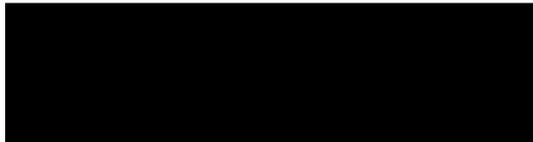
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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



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Date: **JUN 02 2011** Office: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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.

Thank you,

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 rejected. However, pursuant to 8 C.F.R. § 103.5(a)(5)(i), the AAO will move to reconsider these proceedings *sua sponte* for the purpose of remanding the case for further consideration and action.

The petitioner describes itself as a Wi-Fi networking and software development company that seeks to employ the beneficiary as a programmer analyst. 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).

On June 5, 2009, the director issued a Request for Additional Evidence (RFE). The record indicates, however, that the RFE was mailed to a different petitioner referencing a different beneficiary and case file number than the names and file number associated with the present petition. Further, it does not appear that a copy of the RFE was issued to counsel for the petitioner.

On March 15, 2010, the director denied the petition due to abandonment. The director informed the petitioner that there is no appeal from a denial due to abandonment, but that it could file a motion to reopen the case within 33 days of the issuance of the decision.

Counsel for the petitioner submitted Form I-290B on April 13, 2010. Counsel checked Box B in Part 2 of Form I-290B, which states the petitioner is filing an appeal rather than a Motion to Reopen and/or a Motion to Reconsider. Counsel later submitted a brief in support of this appeal on May 13, 2010.

Under 8 C.F.R. § 103.2(b)(15), there is no appeal from a denial due to abandonment. Since the AAO does not have jurisdiction to consider an appeal of a denial due to abandonment, the petitioner's appeal in this matter must be rejected. However, as USCIS did not properly send an RFE to the petitioner or counsel before denying the present petition as abandoned, the AAO hereby reconsiders these proceedings *sua sponte* for the purpose of remanding the case to reissue the RFE to the petitioner with a courtesy copy to its counsel of record.

ORDER: The appeal is rejected. Pursuant to a service motion to reconsider these proceedings, the matter is remanded to the director for further action consistent with the above, including proper issuance of the RFE to the petitioner with a courtesy copy to counsel of record.