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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO 20 Mass, 3/F
Washington, D.C. 20536

JUN 05 2003

File: WAC 01 283 50530 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as an Other Worker Pursuant to Section 203(b)(3)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(A)(iii).

PUBLIC COPY

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:
This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Helen E. Crawford for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The case will be remanded for further consideration and action.

The petitioner is a restaurant. It seeks to employ the beneficiary permanently in the United States as a cook. The director denied the petition on May 30, 2002, stating that the petitioner had abandoned the petition by failing to respond to a request for further evidence.

The petitioner has submitted sufficient evidence of its ability to pay the proffered wage; however, there is no evidence of the beneficiary's work experience in the file.

8 C.F.R. § 103.2(15) provides that a denial due to abandonment may not be appealed, but a petitioner may file a motion to reopen (as the director advised the petitioner in the denial notice). Pursuant to 8 C.F.R. § 103.5(a)(1)(ii), jurisdiction over a motion resides in the official who made the latest decision in the proceeding. Therefore, given the grounds for denial, the petitioner has no right of appeal in this matter, and the Administrative Appeals Unit has no jurisdiction in this proceeding. We remand this matter to the director for a decision pursuant to the regulations governing motions to reopen.

ORDER: The case is remanded to the director for further action in accordance with the foregoing.