



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

**PUBLIC COPY** 134

**JAN 30 2007**

File: [REDACTED] Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(C)

IN BEHALF OF PETITIONER:

[REDACTED]

identification data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Mary C. Mulrean, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was approved by the Director, Vermont Service Center. Upon further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the preference visa petition, and his reasons therefore, and ultimately revoked the approval of the petition on October 29, 1999. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected pursuant to 8 C.F.R. 103.3(a)(2)(v)(B)(1).

The regulation at 8 C.F.R. 205.2(d) indicates that revocations of approvals must be appealed within 15 days after the service of the notice of revocation. The record indicates that the notice of revocation was mailed on October 29, 1999. The appeal was filed on November 23, 1999, approximately 25 days after the decision was mailed. Thus, the appeal was not timely filed.

It is noted that on the Form I-290B, Notice of Appeal, the director erroneously allowed the petitioner 30 days to file the appeal (33 days if the notice was delivered by mail). However, the director's error does not, and cannot, supersede the regulation regarding the time allotted to appeal a revocation.

The regulation at 8 C.F.R. 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. 103.5(a)(2) or a motion to reconsider as described in 8 C.F.R. 103.5(a)(3), the appeal must be treated as a motion, and a decision must be made on the merits of the case.

The petitioner attached a letter to the Form I-290B, which contained a statement that its attorney did not translate or explain the job descriptions of its employees well, and that it requires the beneficiary's services in the U.S. Counsel stated that a brief would be submitted within 30 days; however, as of this date, no brief has been entered into the record. Therefore, the record is considered complete.

8 C.F.R. 103.5(a)(2) requires that a motion to reopen state the new facts to be provided in the reopened proceedings, supported by affidavits or other documentary evidence. 8 C.F.R. 103.5(a)(3) requires that a motion to reconsider state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Neither the petitioner nor counsel provide any new facts to be considered on appeal, state a clear reason for reconsideration, or provide any precedent decisions to establish that the director's

denial was based on an incorrect application of law or Service policy. For these reasons, the appeal will not be treated as a motion to reopen or reconsider and must, therefore, be rejected.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is rejected as untimely filed.