U.S. Department of Justice

Immigration and Naturalization Service

P34

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

[redacted]

identification data deleted to prevent clearly unwarranted invasion of personal privacy

File: [redacted] Office: TEXAS SERVICE CENTER Date: JAN 30 2001

IN RE: Petitioner:
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]

PUBLIC COPY

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 preference visa petition was denied by the Director, Texas Service Center, and 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) as untimely filed.

The petitioner is a Louisiana corporation that claims to be engaged in the restaurant business. It seeks to employ the beneficiary as its executive manager and, therefore, endeavors to classify the beneficiary as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C).

The director denied the petition because the petitioner failed to establish that a qualifying relationship exists between the petitioner and a foreign entity, and that the petitioner had been doing business for at least one year at the time the petition was filed.

Pursuant to 8 C.F.R. 103.3(a)(2)(i), an affected party has 30 days after service of a decision to file an appeal with the office that made the unfavorable decision. The record reflects that the director's decision of January 28, 1998, was sent to the petitioner and to counsel at their addresses of record. On March 25, 1998, the Service notified the petitioner that it was rejecting the petitioner's appeal because the form of payment was not signed.

The petitioner resubmitted the appeal with a signed form of payment, which was received by the Service on April 13, 1998. The appeal was untimely filed, as it was received 75 days after the service of the decision. Although counsel claimed that the Service must have lost the original money order and, therefore, should not penalize the petitioner, there is no evidence to substantiate counsel's argument. The Service did not reject the appeal because the form of payment was not attached to the Form I-290B, but because the form of payment was not signed.

The regulation at 8 C.F.R. 103.3(a)(2)(v)(B)(1) states that an appeal which is not filed within the time allowed must be rejected as improperly filed. 8 C.F.R. 103.2(a)(2)(v)(B)(2), however, 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.

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.

On the Form I-290B, counsel stated that a brief and/or evidence would be submitted to the Administrative Appeals Unit within 30 days. More than two years have passed since counsel made this statement and no additional information has been provided in support of the appeal. Therefore, the record is considered complete.

Neither the petitioner nor counsel addresses the basis of the director's denial on appeal. This includes, providing any new facts to be considered, stating a clear reason for reconsideration, or providing 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.