

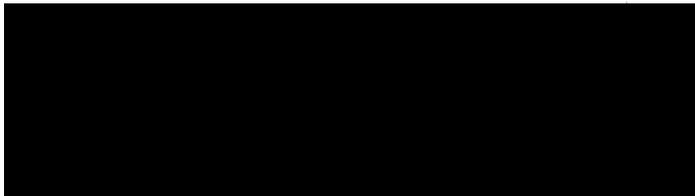


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U.S. Department of Justice
Immigration and Naturalization Service

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



File: [Redacted] Office: VERMONT SERVICE CENTER

Date: DEC 18 2002

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:



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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was approved by the Director, Vermont Service Center. Upon subsequent review, the director properly issued a notice of intent to revoke the petition and his reasons therefore, and ultimately revoked the approval of the petition. The matter is now before the Associate Commissioner for Examinations on appeal. The case will be remanded for further consideration.

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 June 15, 2001. The record shows that the petitioner submitted a money order or check to the Administrative Appeals Office that was forwarded to the Service Center Director on July 6, 2001. The Form 1-290B is originally date stamped as received by the Service Center Director on July 12, 2001. The director incorrectly sent a Notice of Action (Form 1-797) requesting that the petitioner and not the beneficiary sign the "petition." The beneficiary indicates and we accept that he had signed the pertinent documents as president of the petitioner not as the beneficiary. However, even if the original date stamp of July 12, 2001 is accepted as the proper filing of the appeal, the appeal was filed 27 days after the decision was mailed. Thus, the appeal was not timely filed.

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), 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 proceeding, supported by affidavits or other documentary evidence. Review of the record indicates that the appeal meets this requirement.

Although the petition will be remanded to the director for consideration as a motion to reopen, the director should note the information regarding beneficiary's appointment as acting president and election as president is not relevant to the petition at hand. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971). The information the petitioner provided regarding the beneficiary's duties as president does not contribute to a finding that the beneficiary was acting in a managerial or executive capacity for the petitioner at the time the petition was filed. Likewise the addition of staff if added after the date the petition was filed will not contribute to a finding of eligibility.

In this case, the director did raise sufficient factual issues to support the revocation. The notice of intent to revoke and the subsequent revocation were based on evidence that was on the record at the time the notices were issued. The director,



however, should review the documents submitted on appeal for any information that could contribute to a finding that the petitioner has met its burden demonstrating eligibility.

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