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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

[Redacted]

File: [Redacted]

Office: NEBRASKA SERVICE CENTER

Date: 20 FEB 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:

[Redacted]

Public Copy

INSTRUCTIONS:

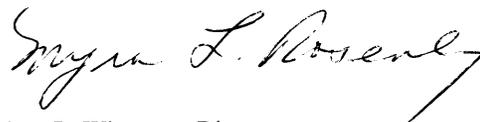
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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


for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the Nebraska Service Center denied the preference visa petition. The Associate Commissioner for Examinations dismissed a subsequent appeal and affirmed his decision in a prior motion to reopen or reconsider. The matter is again before the Associate Commissioner for Examinations on a second motion to reopen or reconsider. The motion will be dismissed.

The petitioner is a farm that seeks to employ the beneficiary as its owner and manager and, therefore, endeavors to classify the beneficiary as a multinational manager or executive 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 it currently employed and would continue to employ the beneficiary in a primarily executive or managerial capacity. The Associate Commissioner affirmed the director's reasoning in his June 18, 1997 dismissal of the appeal and again in his October 31, 1997 decision on the petitioner's first motion.

On second motion, counsel states that the petitioner received a favorable Notice of Action in September of 1997, which stated that the Service would be approving the petition. Counsel maintains that the director should have never sent the motion to the Administrative Appeals Office for adjudication and requests the issuance of a notice that indicates the petition has been approved.

8 C.F.R. 103.5(a) states, in pertinent part:

- (2) *Requirements for motion to reopen.* A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence.
- (3) *Requirements for motion to reconsider.* A motion to reconsider must 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 on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.
- (4) *Processing motions in proceedings before the Service.* A motion that does not meet applicable requirements shall be dismissed. . . .

In a December 2, 1997 letter to counsel, the director explained that the petition had not been approved; the Notice of Action that

the petitioner received in September of 1997 was in error. Therefore, the director has already addressed counsel's concerns that he raises in this second motion.

As neither the petitioner nor counsel provides new facts for the Service to consider regarding whether the proffered position can be classified as a multinational executive or managerial position, the motion does not meet applicable requirements as outlined in 8 C.F.R. 103.5(a). Accordingly, the motion will be dismissed.

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 met that burden.

ORDER: The motion is dismissed.