



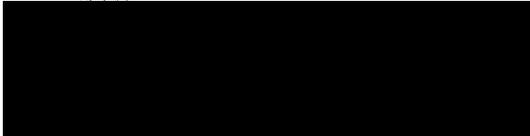
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U.S. Department of Justice

Immigration and Naturalization Service

Identification data deleted to prevent clearly unwarranted invasion of personal privacy

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



File: [Redacted]

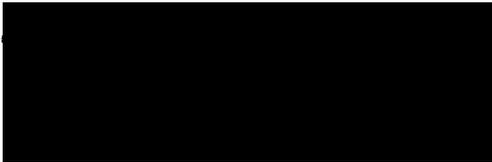
Office: CALIFORNIA SERVICE CENTER

Date: MAR - 5 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 Director of the California Service Center initially approved the immigrant visa petition. Upon further review, the director determined that the petitioner was not eligible for the benefit sought, and she revoked her approval of the petition on February 15, 2000. 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) as untimely filed.

The petitioner is a California corporation that imports and distributes beer. It seeks to employ the beneficiary as its managing director 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 revoked her approval of the petition because the petitioner did not respond to the director's Notice of Intent to Revoke. In the Notice of Intent to Revoke, the director informed the petitioner that she had discovered derogatory evidence, which indicated that a multinational corporation did not exist and the proffered position was neither primarily executive nor primarily managerial in nature.

On appeal, counsel states that the beneficiary was granted adjustment of status on March 10, 1999 based upon the approved I-140 petition and, therefore, the director may not revoke her approval of the I-140 petition at the present time. Counsel also states that the petitioner had responded to the director's Notice of Intent to Revoke and submits a copy of the petitioner's response. The response is comprised of a letter from counsel stating that the beneficiary had already adjusted her status to that of a lawful permanent resident and a copy of the beneficiary's passport.

Pursuant to 205.2(d), a petitioner may appeal the decision to revoke the approval of a petition within 15 days after the service of notice of the revocation. According to the record, the director served her Notice of Revocation to the petitioner and counsel at their addresses of record on February 15, 2000, and informed the petitioner that it had 15 days (18 days if served by mail) to appeal the decision to the Administrative Appeals Office. The Service, however, received the appeal 28 days later on March 14, 2000. Therefore, the appeal was not timely filed.

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) 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.

On appeal, counsel does not specifically address the derogatory evidence that the director discovered, which was disclosed in the Notice of Intent to Revoke. Instead, counsel merely states that the director may not revoke her approval of the petition because the beneficiary has already adjusted her status to that of a lawful permanent resident.

As neither counsel nor the petitioner presents new facts to be considered, or submits precedent decisions to establish that the director's denial was based on an incorrect application of law or Service policy, the appeal will not be treated as a motion to reopen or reconsider and will, 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.