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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass. Ave., 3rd Floor
Washington, D.C. 20536

[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **JUL 22 2003**

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)

ON BEHALF OF PETITIONER:

[REDACTED]

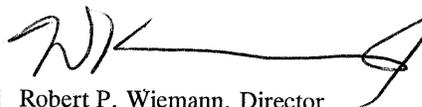
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center. The petitioner appealed the matter to the Administrative Appeals Office (AAO). The appeal was subsequently dismissed. The matter is now before the AAO on motion to reopen. The motion will be rejected as untimely filed.

The petitioner was incorporated in the State of California and claims to be a casting agency. It seeks to employ the beneficiary as its president. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager. The director denied the petition stating that the petitioner has acted as a first-line supervisor whose subordinates are not professional, managerial, or supervisory and concluded that instead of managing personnel or a function, the beneficiary has been performing the day-to-day duties of the petitioning organization.

On appeal, counsel asserted that the petitioner submitted sufficient evidence to establish that the beneficiary manages an essential function of the petitioning organization.

The director of the AAO conducted a thorough review of the documentation submitted up to, and including, the date of the appeal. He then dismissed the appeal concluding that the evidence of record suggests that the beneficiary actually performs the services of the petitioning organization. The director also concluded that the job descriptions provided by the petitioner and by counsel were too vague to provide the Bureau with any insight into the beneficiary's daily activities.

The petitioner has since filed a motion to reopen the case.

Pursuant to 8 C.F.R. § 103.5(a)(1)(I), the following time restrictions apply to motions to reopen and reconsider:

Any motion to reconsider an action by the [Bureau] filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. 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 the period expires, may be excused in the discretion

of the [Bureau] where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

In the instant case, the AAO dismissed the petitioner's appeal on January 8, 2001. The decision was sent to the petitioner's address of record and to the petitioner's attorney of record. Although the record indicates that the petitioner has since hired different counsel, the Form G-28 submitted by the most recent counsel is dated August 16, 2002, 19 months after the appeal was dismissed. Therefore, the dismissal of the appeal was properly sent to the petitioner and the attorney of record at that time.

The petitioner's motion to reopen was written on August 22, 2002 and was received by the Bureau on August 23, 2002, more than 19 months after the appeal was dismissed. The petitioner failed to file the motion within the 30-day period prescribed by the regulations cited above. Neither the petitioner nor its counsel have submitted evidence that such a lengthy delay was either reasonable or was beyond the petitioner's control. In fact, counsel does not even acknowledge the petitioner's significantly late filing. Consequently, the AAO cannot excuse the untimely filing of the petitioner's motion.

In visa petition proceedings, the petitioner bears the burden of proving eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The motion is hereby rejected.