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

B4

*ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
AAO, BCIS, 20 Mass, 3/F
Washington, DC 20536*



File: WAC 01 123 52814 Office: CALIFORNIA SERVICE CENTER

Date: **NOV 25 2003**

IN RE: Petitioner:
Beneficiary:



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:



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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The petitioner is a corporation organized in the State of California in January 1998. It claims to be engaged in importing and exporting fashion and hair accessories. 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 determined that the petitioner had not established that the beneficiary would be employed in a managerial or executive capacity.

The director denied the petition on June 4, 2002. CIS received the petitioner's Form I-290B Notice of Appeal on August 5, 2002, more than sixty days after the director's decision. Counsel requested that the director treat the appeal as a motion to reopen and reconsider the director's decision. As a matter of discretion, the director declined to treat the late appeal as a motion and forwarded the matter to the AAO for review.

The regulation at 8 C.F.R. § 103.3(a)(2)(i) requires an affected party to file the appeal with the office that made the unfavorable decision within 30 days after service of the decision.

Accordingly, the appeal is not properly before the AAO. The petitioner did not timely file an appeal and the director declined to reopen and reconsider his decision. The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) requires that an untimely appeal be treated as a motion only if it 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 regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part:

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

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 [CIS] 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.

In this matter counsel does not submit any evidence that could be considered new and does not submit precedent decisions establishing that the director's decision was based on an incorrect application of law or CIS policy. Accordingly, the appeal will not be remanded as a motion to reopen or as a motion to reconsider.

ORDER: The appeal is rejected.