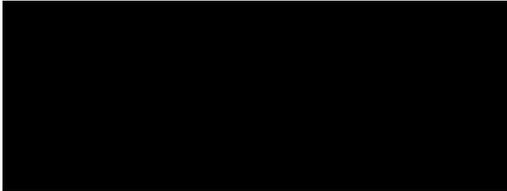




U.S. Citizenship
and Immigration
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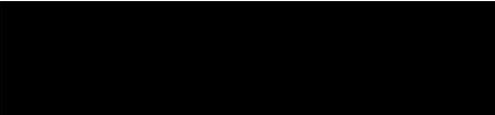
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prevent clearly unwarranted
invasion of personal privacy**

BY
NOV 23 2004

FILE: WAC 02 072 52793 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: 
Beneficiary

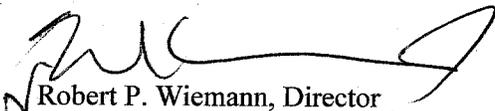
PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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 nonimmigrant visa petition and a subsequent appeal was summarily dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be rejected as untimely filed.

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party must file the motion within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The failure to file before this period expires may be excused at the discretion of the AAO where it is demonstrated that the delay was reasonable and beyond the control of the petitioner. 8 C.F.R. § 103.5(a)(1)(i).

In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a Citizenship and Immigration Services (CIS) office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the motion shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The last decision of the AAO was issued on October 31, 2003. The motion was filed on December 11, 2003, more than 41 days after the AAO decision was issued.

On motion, the petitioner has not requested that the failure to file the motion within the 30-day time period be excused. The petitioner does not assert that the delay in filing the motion was reasonable, and beyond the control of the applicant. In addition, 8 C.F.R. section 103.5(a)(2) 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 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.

Counsel does not submit any document that would meet the requirements of a motion to reconsider. Counsel argues that the Notice I-290B's conclusory statement that the director erred when determining that the beneficiary was not employed in a managerial or executive position should be a sufficient ground upon which to base an appeal. Counsel does not, however, cite any precedent decisions in support of her argument. Counsel does not argue that the AAO's decision was based on an incorrect application of law or CIS policy.

Further, the AAO observes that counsel for the petitioner acknowledges that its brief submitted to the AAO in support of the appeal was filed more than four months after the petitioner submitted its Notice I-290, Notice of Appeal, and thus was also submitted untimely.

Finally, the AAO notes that the brief submitted with the motion to reconsider and now in the record does not set forth additional relevant evidence or pertinent precedent decisions sufficient to establish that the director's decision was incorrect based on the evidence at the time of his decision.

As a matter of discretion, the petitioner's failure to file the motion within the period allowed will not be excused as either reasonable or beyond the control of the applicant. Accordingly, the motion will be rejected as untimely filed.

ORDER: The motion is rejected as untimely filed.