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**U.S. Citizenship
and Immigration
Services**

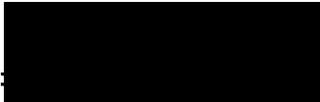
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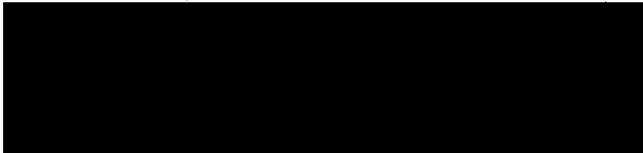
File: WAC 02 173 52409 Office: CALIFORNIA SERVICE CENTER Date: FEB 07 2005

IN RE: Petitioner:
Beneficiary:



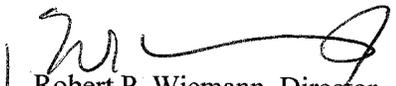
Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to
Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

IN 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 immigrant visa petition was denied by the Director, California Service Center. The petitioner filed a subsequent appeal and the Administrative Appeals Office (AAO) dismissed that appeal. The petitioner filed a motion on the AAO decision and the AAO determined that the motion was not filed in a timely manner. The AAO rejected the motion as late. The matter is now before the AAO on a second motion to reconsider. The motion will be rejected.

The petitioner is a California company that claims to import and export petroleum-related goods. It seeks to employ the beneficiary as its president/chief executive officer 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 denied the petition because the proffered position is not in a managerial or executive capacity, and the petitioner had not been doing business as that term is defined in the regulations. On appeal, the AAO overturned the director's conclusions regarding the petitioner's business operations, finding that the petitioner had been doing business. The AAO, however, concurred with the director that the beneficiary would not be employed in a managerial or executive capacity.

The AAO dismissed the appeal on August 29, 2003. On October 27, 2003, 59 days after the AAO decision, counsel for the petitioner filed a motion seeking to reopen or reconsider that decision. After reviewing the record, the AAO rejected the motion as the appeal had not been filed in a timely manner.

Counsel for the petitioner now submits a copy of an electronic record from Federal Express Corp. (FedEx) indicating that the petitioner submitted the motion on September 29, 2003. Counsel asserts that the motion was timely and properly filed.

Contrary to the regulations and the instructions in the AAO decision, the electronic FedEx record indicates that the petitioner submitted the motion *directly* to the AAO and not the California Service Center, as the office maintaining the original record. 8 C.F.R. § 103.5(a)(1)(iii)(E). In addition, the original AAO decision specifically instructed the petitioner that any motion must be filed with the office that originally decided the case. *See* AAO decision dated August 29, 2003. The actual date of receipt for the motion is October 27, 2003, the date that the motion was properly filed with the California Service Center.

An affected party has 30 days from the date of an adverse decision to file a motion to reopen or reconsider a proceeding before Citizenship and Immigration Services (CIS). 8 C.F.R. § 103.5(a)(1)(i). If the adverse decision was served by mail, an additional three-day period is added to the prescribed period. 8 C.F.R. § 103.5a(b). Since the original motion was untimely filed, 59 days after the adverse decision, the AAO properly rejected the motion.

As the motion was properly rejected by the AAO, there is no decision on the part of the AAO that may be reopened in this proceeding. Again, the motion must be rejected.

ORDER: The motion is rejected.