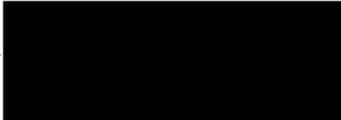




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U.S. Department of Justice
Immigration and Naturalization Service

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



Public Copy

JUL 12 2001

File: [Redacted] Office: Texas Service Center

Date:

IN RE: Petitioner: [Redacted]

Petition: Immigrant Petition by Alien Entrepreneur Pursuant to § 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(5)

IN BEHALF OF PETITIONER:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center. The Associate Commissioner, Examinations, dismissed a subsequent appeal. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be dismissed.

On February 16, 2001, counsel submitted a brief entitled, "Motion to Reopen and Motion for Extension of Time to File Brief and Evidence." Counsel specifically requested until April 10, 2001 to submit additional evidence and a supplemental brief.

According to 8 C.F.R. 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. 103.3(a)(2)(vii) allows for limited circumstances in which a petitioner can supplement an already-submitted appeal. This regulation, however, applies only to appeals, and not to motions to reopen or reconsider. There is no analogous regulation which allows a petitioner to submit new evidence in furtherance of a previously-filed motion. In addition, as of this date, more than two months after the extension requested by counsel, we have received no additional evidence or a supplemental brief.

It remains, the motion to reopen filed on February 16, 2001 is not supported by affidavits or other documentary evidence. Thus, it does not qualify as a proper motion to reopen and must be dismissed.

Finally, it is noted that the motion was untimely filed. 8 C.F.R. 103.5(a)(1)(i) states that a motion must be filed within 30 days of the decision that the motion seeks to reopen or reconsider. 8 C.F.R. 103.5a(b) adds three days to the prescribed period when service of a decision is by mail, as in this case. 8 C.F.R. 1.1(h) explains that when the last day of a period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. Here, the AAO's decision is dated January 10, 2001. Even allowing for the extra three days, the motion, received on February 16, 2001, a Friday, was untimely filed.

ORDER: The motion is dismissed.