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

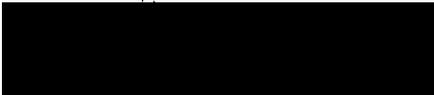
ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536



File: SRC-02-056-50536 Office: Texas Service Center

Date: DEC 15 2003

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

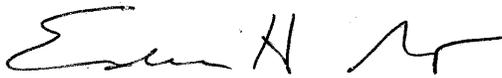
INSTRUCTIONS:

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 Citizenship and Immigration Services (CIS) 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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The petitioner is a Restaurant. It seeks to employ the beneficiary permanently in the United States as a foreign food specialty cook. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor. The director determined that the petitioner had not established that it had the financial ability to pay the beneficiary the proffered wage as of the priority date of the visa petition.

Pursuant to 8 C.F.R. § 103.3(a)(2)(i), an affected party has 30 days after service of a decision to file an appeal with the office that made the unfavorable decision. The record reflects that director's decision of July 24, 2002, was sent to the petitioner at its address of record. The appeal Form I-290B was received by CIS 61 days later on September 24, 2002. The appeal was untimely filed.

The regulation at 8 C.F.R. § 103.3 (a) (2) (v) (B) (1) states that an appeal which is not filed within the time allowed must be rejected as improperly filed. 8 C.F.R. § 103.2 (a) (2) (v) (B) (2), however, states that, if an untimely appeal 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 appeal must be treated as a motion, and a decision must be made on the merits of the case.

Regulations at 8 C.F.R. § 103.5(a)(2) state, in pertinent part, that 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.

Regulations at 8 C.F.R. § 103.5(a)(3) state, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decision 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.

Regulations at 8 C.F.R. § 103.5(a)(4) state, in pertinent part, that a motion that does not meet applicable requirements shall be dismissed.

On appeal, the petitioner states that he misunderstood when he should start paying the proffered wage. The petitioner, furthermore, does not state any reasons for reconsideration that are supported by any pertinent precedent decisions establishing that the decision was based on an incorrect application of law or CIS policy. For these reasons, the appeal will not be treated as a motion to reopen or reconsider.

ORDER: The appeal is rejected as untimely filed.