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**APR 28 2004**

FILE: WAC-01-243-54251 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: 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:

[REDACTED]

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 preference visa petition was denied by the Director, California Service Center, and came before the Administrative Appeals Office (AAO) on appeal. The appeal was dismissed. The matter is again before the AAO on a motion to reconsider. The motion will be dismissed as untimely.

The petitioner is a computer parts and components wholesaler. It seeks to employ the beneficiary permanently in the United States as an assistant sales/marketing engineer – computer parts. The priority date on the petition is September 30, 1998. The minimum job requirements as stated on the Form ETA 750 are a Bachelor of Science degree in Electrical Engineering, five years of experience in the job offered or in the related occupation of “computer parts and components market[ing],” and one year of management experience. In denying the petition the director found that the petitioner had failed to establish that the beneficiary had a bachelor’s degree or a foreign equivalent degree.

The evidence before the director on the issue of the beneficiary’s education consisted of an evaluation report dated January 18, 1997 by the Foundation for International Services, Inc.; a copy of a certificate in electronic engineering awarded by Hong Kong Polytechnic to the beneficiary on November 19, 1984; and copies of transcripts issued on August 12, 1981 and August 14, 1984 for the beneficiary for courses taken at Hong Kong Polytechnic.

The evaluation report relied on a combination of the beneficiary’s education and work experience in finding that the beneficiary had the equivalent of a bachelor’s degree in electronics engineering technology from an accredited college or university in the United States.

The AAO dismissed the appeal, concurring in the director’s finding that the evidence failed to establish that the beneficiary held a bachelor’s degree or a foreign equivalent degree.

The regulation at 8 C.F.R. § 103.5(a)(1) states in pertinent part as follows.

Any motion to reconsider an action by [CIS] filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before [CIS] filed by an applicant or petitioner, 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 [CIS] where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

Three days are added to the permissible period when the notice of the decision is by mail. 8 C.F.R. § 103.5a(b).

The regulation at 8 C.F.R. § 1.1(h) states:

The term *day* when computing the period of time for taking any action provided in this chapter including the taking of an appeal, shall include Saturdays, Sundays, and legal holidays, except that when the last day of the period so computed falls on a Saturday, Sunday or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, nor a legal holiday.

The decision of the AAO was issued on January 13, 2003 and was served by mail. The thirty-three day period for filing a motion to reconsider ended on Saturday, February 15, 2003. The following Monday, February 17, 2003, was a legal holiday. Therefore by operation of 8 C.F.R. § 103.5(a)(3), quoted above, the period for filing a motion to reconsider was extended to Tuesday, February 18, 2003.

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The petitioner's motion to reconsider was received by the director on March 4, 2003. That date was exactly two weeks after the expiration of the period for filing a motion to reconsider. The motion to reconsider is therefore untimely and must be dismissed.

**ORDER:** The motion to reconsider is dismissed.