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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

[REDACTED]

File [REDACTED] Office: Texas Service Center

Date:

MAR 31 2004

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

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: [REDACTED]

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*

Robert P. Wiemann, Director  
Administrative Appeals Office

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prevent clearly unwarranted  
invasion of personal privacy

**DISCUSSION:** The Director, Texas Service Center denied the preference visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen. The motion will be dismissed.

The petitioner is a private household. The petitioner's annual income is not specified. It seeks to employ the beneficiary as a kosher cook. The director found that the petitioner had not established that it had the ability to pay the proffered wage and denied the petition.

An affected party has 30 days from the date of an adverse decision to file a motion to reopen or reconsider a proceeding before CIS. 8 C.F.R. § 103.5(a)(1)(i). If the adverse decision was served by mail, an additional three days is added to the prescribed period. 8 C.F.R. § 103.5a(b). Any motion that does not meet the applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The petitioner's motion does not meet applicable requirements because it was not timely filed. The AAO mailed its decision to the petitioner on July 3, 2003. CIS received the petitioner's motion 53 days later on August 25, 2003. Neither counsel nor the petitioner presents any evidence for CIS to consider regarding the delay in timely filing the motion 8 C.F.R. § 103.5(a)(1)(i). Accordingly, the motion will be dismissed.

As always, the burden of proving eligibility for the benefits sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The motion is dismissed.