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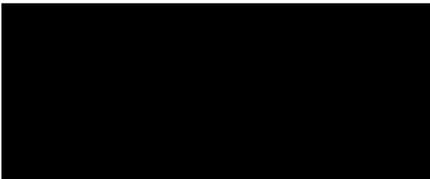
Petitioner:



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:



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, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director of the Vermont Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion will be rejected as untimely.

The petitioner is a delicatessen. It sought to employ the beneficiary permanently in the United States as a pastry baker. As required by statute, the petition was accompanied by an individual labor certification approved by the Department of Labor.

On October 30, 2002, the director denied the petition, determining that the petitioner had not established that it had the continuing financial ability to pay the beneficiary the proffered wage as of the priority date of the visa petition.¹

The AAO dismissed the petitioner's appeal on April 26, 2004.

Counsel for the petitioner has submitted a motion to reconsider the AAO's decision of April 26, 2004. Pursuant to 8 C.F.R. § 103.5(a)(3), a motion to reconsider must offer the reasons for reconsideration and be supported by pertinent legal authority showing that the decision was based on an incorrect application of law or CIS policy. It must also demonstrate that the decision was incorrect based on the evidence contained in the record at the time of the initial decision.

The regulation at 8 C.F.R. §103.5(a)(1)(i) further provides in pertinent part:

Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider.

In this case, record shows that the any motion to reconsider this matter should have been filed by Monday, June 1st, 2004, or the first regular business day following the deadline. (including three days for mailing) It was filed on February 7, 2005, more than eight months following the filing deadline.

As the motion was filed well beyond the time permitted by regulation, it must be rejected as untimely. Accordingly, the petitioner's motion to reconsider is rejected as untimely filed.

ORDER: The petitioner's motion to reconsider is rejected.

¹ As noted by the AAO in its April 26, 2004, decision, the director adjudicated the petitioner's untimely appeal as a motion to reopen under 8 C.F.R. § 103.3(a)(2).