



U.S. Citizenship
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FILE:

EAC 03 107 50401

Office: VERMONT SERVICE CENTER

Date: JAN 08 2007

IN RE:

Petitioner:
Beneficiary:



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

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 preference visa petition was denied by the Director, Vermont Service Center, a subsequent appeal was dismissed by the Administrative Appeals Office (AAO), and the visa petition is now before the AAO on a motion to reconsider. The motion will be rejected.

The petitioner is a restaurant/catering business. It seeks to employ the beneficiary permanently in the United States as a foreign food specialty cook. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. The director determined that the petitioner had not established its continuing ability to pay the proffered wage from the priority date and denied the petition accordingly. The AAO affirmed the director's decision on appeal.

On motion, counsel contends that she did not receive a copy of the AAO's decision and states that additional grounds and arguments will be submitted upon counsel's full review of the AAO's decision. However, the record of proceeding shows that the AAO's decision was mailed to counsel's current address, [REDACTED]

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

- 1) *Routine service.* Routine service consists of mailing a copy by ordinary mail addressed to a person at his last known address.

Since the AAO's decision was mailed to counsel's last known (and current) address, the decision is considered properly served.

Counsel indicated on Form I-290B that she required an additional 30 days to submit a brief and/or evidence. In response to a fax from the AAO with regard to counsel's submission of a brief, counsel requested an additional 30 days "to file financial documents it hopes it will receive to show and substantiate the issues in this matter." As of this date, more than 81 days after counsel's original request for additional time, no additional documentation has been received from counsel or the petitioner. Therefore, a decision will be determined based on the record, as it is currently constituted.

The regulation at 8 C.F.R. § 103.5(a)(3) states in pertinent part:

Requirements for motion to reconsider. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or [Citizenship and Immigration Services (CIS)] 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.

The regulation at 8 C.F.R. § 103.5(a)(2) states in pertinent part:

Requirements for motion to reopen. 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. . . .

In the instant case, counsel has failed to submit any precedent decisions that establish that the decision was based on an incorrect application of law or CIS policy. Counsel also failed to establish that the decision was incorrect based on the evidence of record at the time of the initial decision. In addition, even though counsel gives three reasons why the AAO's decision should be reconsidered, those three arguments are contingent upon the supplemental documentation counsel intended to provide, but never did¹.

As counsel's motion does not meet the requirements of a motion to reconsider or reopen, the motion will be rejected.

ORDER: The motion is rejected. The AAO's decision, dated September 5, 2006, is affirmed. The petition remains denied.

¹ For example, counsel states that the AAO was incorrect in assuming the beneficiary would replace a worker and said additional evidence is forthcoming. Counsel also states that the AAO was incorrect and confused in its analysis of the petitioner's business structures and use of the petitioner's owner's personal assets, and states that an analysis of corporation law and partnership assets is forthcoming.