

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

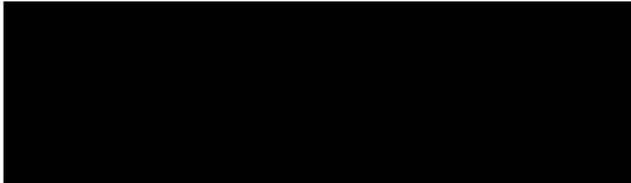
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B6

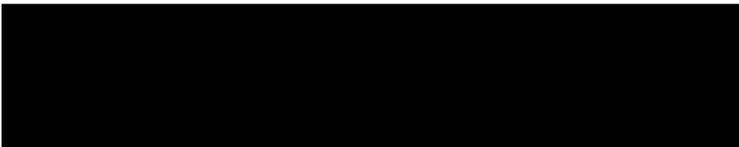


File: [Redacted] Office: TEXAS SERVICE CENTER Date: SEP 10 2007
SRC 04 221 52539

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)

IN 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 Director of the Texas Service Center denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner seeks to classify the beneficiary pursuant to Section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3), as a professional. The director determined that the petitioner failed to establish its ability to pay the proffered wage and denied the petition accordingly.

On appeal, counsel indicated that he would submit a brief and/or evidence to the AAO within 60 days and stated that the petitioner is in the process of conducting an audit, and that the audited financial documents will establish the petitioner's ability to pay the proffered wage. On appeal, counsel submitted a letter dated January 3, 2006 from the petitioner confirming that it had hired an accountant to review and prepare its accounts and returns, and a letter dated February 2, 2006 from an accountant with AT Accounting Services indicating that the petitioner had hired a certified public accountant (CPA) to prepare its financial statements and tax returns from June 2001. The CPA states that he has prepared the petitioner's financial statements and tax returns from the periods ended December 31, 2001, December 31, 2002, December 31, 2003, and December 31, 2004 based on information provided by the petitioner's management.

Counsel dated the appeal February 10, 2006.¹ As of this date, more than 18 months later, the AAO has received nothing further. The AAO sent a fax to counsel on August 3, 2007 informing counsel that no separate brief and/or evidence was received, to confirm whether or not he would send anything else in this matter, and as a courtesy, providing him with five (5) days to respond. To date, more than two weeks later, no reply has been received.

¹ This office notes that the appeal may also be rejected as untimely filed. In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal with the office where the unfavorable decision was made within 30 days of after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i). The record indicates that the director issued the decision on January 9, 2006. Although counsel dated the appeal February 10, 2006, the petitioner improperly sent to the appeal to the AAO. The AAO returned the appeal to the petitioner on February 13, 2006 and noted that the appeal must be submitted to the Service Center or Field Office that rendered the decision. The appeal was not properly received by the director until February 23, 2006, 45 days after the decision was issued. Accordingly, the appeal was untimely filed. Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). 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 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. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). Here, the untimely appeal does not meet the requirements of a motion to reopen or a motion to reconsider. Therefore, there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2). As the appeal was untimely filed and does not qualify as a motion, the appeal may also be rejected.

As stated in 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Counsel here has not specifically addressed the reasons stated for denial and has not provided any additional evidence. The appeal must therefore be summarily dismissed.

ORDER: The appeal is dismissed.