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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



Public Copy

JUL - 6 2001

File: WAC-98-240-50050

Office: California Service Center

Date:

IN RE: Petitioner:



Petition: Immigrant Petition by Alien Entrepreneur Pursuant to § 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(5)

IN BEHALF OF PETITIONER: Self-represented

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 the Service 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was revoked by the director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner seeks classification as an alien entrepreneur pursuant to § 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(5).

On June 14, 1999, the director determined that the petitioner had failed to respond to a request for evidence and denied the petition for abandonment. The petitioner filed a motion to reopen, asserting that he never received the director's request. The director reopened the petition, noted the petitioner had not presented any "proof" that he failed to receive the director's request, and let the denial stand.

On appeal, the petitioner reasserts that he did not receive the director's request and that it is not possible to prove that one did not receive something. The petitioner continues to profess that he is still not aware of what documents the director requested.

We concur with the petitioner. It is difficult to imagine how the director expected the petitioner to provide proof of not receiving a mailed document. The record contains two copies of the request for additional evidence, neither of which include the address to which the notice was allegedly sent. In addition, the record does not contain a returned receipt card signed by the petitioner acknowledging receipt of the director's request. While a request for evidence need not be sent by certified mail, it remains that the record contains no evidence that the request was received by the petitioner. In light of the petitioner's insistence that he did not receive the notice and the lack of evidence to the contrary, the director should have afforded the petitioner another opportunity to respond.

Therefore, this matter will be remanded for the purpose of affording the petitioner another opportunity to respond to the request for additional documentation. The director should resend the request to the petitioner by certified mail, and include any returned receipt card as part of the record. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for Examinations for review.