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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

File: WAC-99-205-52417 Office: California Service Center

Date: MAY 16 2001

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:



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 preference visa petition was approved by the Director, California Service Center, and certified to the Associate Commissioner for Examinations for review. The Associate Commissioner reversed the director's decision and denied the petition. The matter is now before the Associate Commissioner on motion. The motion will be dismissed.

The Administrative Appeals Office ("AAO") reversed the director's decision in an appellate decision dated February 4, 2000. On October 31, 2000, the Service received a Form I-290B and fee from the petitioner stating that the form constituted his motion to reopen and reconsider. Counsel asserted that the AAO's decision:

[I]ncorrectly applied certain aspects of the law to the case and incorrectly analyzed certain material evidence presented in support of the I-526 petition by ignoring material evidence, by attaching undue weight to relatively insignificant information, and by erring in certain of its ultimate findings of relevant facts.

The petitioner also submitted additional evidence allegedly not previously available but that allegedly establishes the petitioner's eligibility at the time of filing.

The motion was untimely filed. 8 C.F.R. 103.5(a)(1)(i) states that a motion must be filed within 30 days of the decision that the motion seeks to reopen or reconsider. 8 C.F.R. 103.5a(b) adds three days to the prescribed period when service of a decision is by mail, as in this case. 8 C.F.R. 1.1(h) explains that when the last day of a period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or legal holiday. Here, the AAO mailed its decision to the petitioner and to counsel on February 4, 2000. Even allowing for the extra three days and the weekend at the end of the 33-day period, the letter, received on October 31, 2000, was untimely.

Counsel requests permission to file the instant motion beyond the time limit. 103.5(a)(i) provides that a late motion may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner. Counsel asserts that good cause exists for filing an untimely motion because the petition was initially approved and certified to the AAO, where the decision was reversed and the petition denied. Thus, concludes counsel, "petitioner was not aware of the need for additional evidence until he had received and analyzed the AAO decision."

Counsel's arguments are not persuasive. The regulations specifically provide for certification to the AAO, and provide no extra time for motions to reopen AAO decisions, which reverse

certified approvals. It is noted that a request for additional evidence from the director would have required a response in no more than 12 weeks. A denial by the director would have required an appeal within 30 days, with 30 additional days in which to provide additional evidence or a brief. It remains, the instant motion was filed over eight months after the AAO's decision which was properly sent to the petitioner and counsel. Such a delay is not reasonable.

ORDER: The motion is dismissed.