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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

PUBLIC COPY

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



MAR 13 2003

File: [Redacted] Office: Vermont Service Center Date:

IN RE: Petitioner: [Redacted]

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

ON 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 that 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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was initially approved by the Director, Vermont Service Center. On the basis of new information received and on further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the visa petition, and his reasons therefore, and ultimately revoked the approval of the petition on August 30, 2001. The Administrative Appeals Office (AAO) remanded a subsequent untimely appeal for consideration as a motion. On April 30, 2002, the director reaffirmed his initial decision. The matter is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

The appeal was filed on May 31, 2002, 31 days after the decision was rendered. According to the pertinent regulations, the appeal was not timely filed. 8 C.F.R. § 205.2(d) states that revocations of approvals must be appealed within 15 days after the service of the notice of revocation. The final notice of revocation decided on motion correctly stated that the petitioner could file an appeal within 15 days (18 if served by mail).

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 as described in 8 C.F.R. § 103.5(a)(2), or the requirements of a motion to reconsider as described in 8 C.F.R. § 103.5(a)(3), the appeal must be treated as a motion, and a decision must be made on the merits of the case.

8 C.F.R. § 103.5(a)(2) requires that a motion to reopen state the new facts to be proved at the reopened proceeding; and be supported by affidavits or other documentary evidence. Review of the record indicates that the appeal does not meet this requirement. On appeal, no new evidence is submitted. Rather, counsel requests an additional 60 days in which to supplement the record. A motion must meet the requirements of a motion at the time it is filed.¹

8 C.F.R. § 103.5(a)(3) requires that 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 Bureau policy. Such a motion must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. Review of the record indicates that the appeal does not meet this requirement. Counsel makes no arguments based on precedent decisions.

ORDER: The appeal is rejected.

¹ As of this date, more than nine months later, this office has received nothing further.