

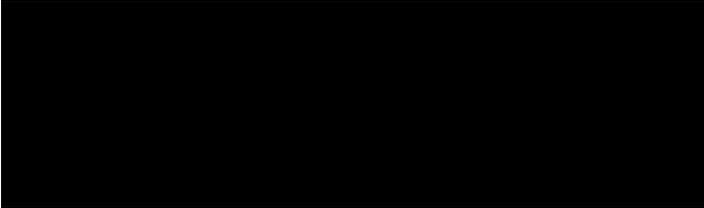
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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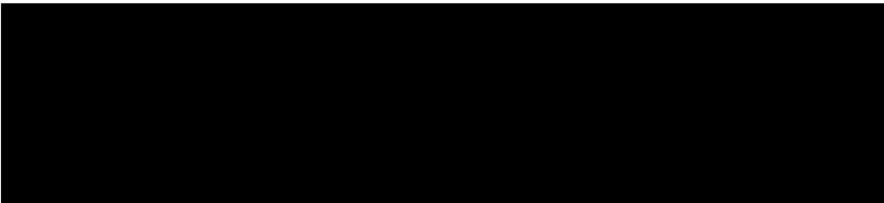
FILE: WAC 01 279 52799 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(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 service center director denied the nonimmigrant visa petition by decision dated March 18, 2002, on the ground that the proffered position did not qualify as a specialty occupation. The petitioner then filed a motion to reconsider or alternative brief on appeal (motion/alternative appeal) to the Administrative Appeals Office (AAO). That motion/alternative appeal was filed on April 24, 2002. The motion/alternative appeal was dismissed by the director as untimely filed, on August 7, 2002. The petitioner then appealed the director's August 7, 2002 decision. On February 2, 2004 the AAO issued a decision summarily dismissing the appeal. The matter is again before the AAO on motion to reopen and reconsider its decision. The motion will be dismissed. The previous decision of the AAO will be affirmed.

The petitioner, a residential care facility, seeks to employ the beneficiary as a medical writer. It endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

A motion to reconsider must: (1) 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; and (2) 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).

On motion, counsel contends that its motion/alternative appeal filed with the California Service Center (CSC) should be deemed timely filed because certain contract personnel at that facility were indicted for shredding documents pertaining to applications and petitions for immigration benefits between February of 2002 and April of 2002. In support of that assertion, the petitioner submitted a document entitled *INS Response on CSC Document Shredding Indictments* (posted on AILA at Doc. No. [REDACTED] (Feb. 4, 2003). The petitioner also resubmitted a letter from a U.S. Postal Service consumer affairs representative, dated August 12, 2002, concerning postal service goals for delivery of first class mail.

The CSC receipt-date stamp records the appeal as being received there on April 24, 2002, 37 days after service of the director's decision appealed from. The motion/alternative appeal would have been timely filed if received within 33 days of the director's decision of March 18, 2002.

The documentation submitted does not establish that the petitioner's appeal was submitted to CIS prior to April 24, 2002, the date that CIS recorded as the filing date. The misconduct reported in the *INS Response on CSC Document Shredding Indictments (INS Response)* pertained only to shredding documents, an activity not related to the processing of the instant appeal, which was received intact at CSC.¹

¹ The *Semiannual Report to Congress October 1, 2002-March 31, 2003* by the Office of the Inspector General of the Immigration and Naturalization Service, as CIS was formerly known, states that the shredding was discovered and stopped on April 4, 2002, a date prior to counsel's mailing of the appeal on April 15, 2002 as evidenced by the postmark on the mailing envelope.

The letter from the U.S. Postal Service does not attest that the appeal was delivered prior to April 24, 2002, nor does it attest that its mail delivery system would have ensured delivery prior to that date. The letter expressly states that First Class mail – the mode used by counsel in this case – “is not trackable,” that “it would not be possible to determine why a particular piece of mail took longer than our delivery standard,” and that there is no guarantee of when a piece of First Class mail would actually be delivered.

The motion/alternative appeal was received by the CSC and stamped as such on April 24, 2002. It was not timely filed. The petitioner’s motion to reopen and reconsider shall accordingly be dismissed.

ORDER: The motion is dismissed. The previous decision of the AAO dated February 2, 2004 is affirmed.