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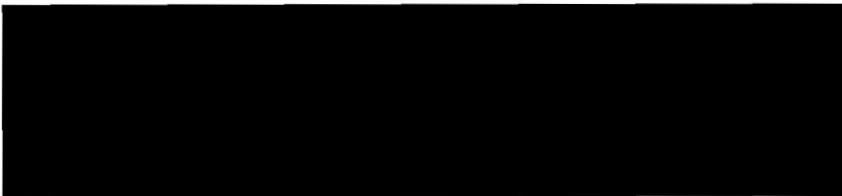


FILE: WAC 05 220 52216 Office: CALIFORNIA SERVICE CENTER Date: MAY 02 2008

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

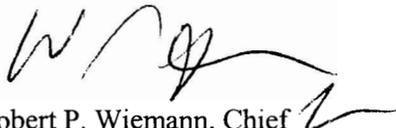
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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 and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be rejected as untimely filed.

The petitioner is a property management business that seeks to extend its authorization to employ the beneficiary as an electrical engineer consultant. The petitioner 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). The director denied the petition on the basis that the proffered position did not meet the definition of a specialty occupation. The AAO affirmed the director's findings.

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party must file the motion within 30 days of 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 failure to file before this period expires may be excused at the discretion of the AAO where it is demonstrated that the delay was reasonable and beyond the control of the petitioner. 8 C.F.R. § 103.5(a)(1)(i).

In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a CIS office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the motion shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

In this matter, the AAO mailed its decision on June 20, 2007. The petitioner subsequently forwarded the Form I-290B, Notice of Appeal or Motion, to the AAO in error. An appeal/motion is not properly filed until the proper office, in this case the California Service Center, receives it. The petitioner resubmitted the motion to the California Service Center in accordance with the instructions. The motion was received by the California Service Center on July 31, 2007, 41 days after the decision was issued. The AAO also notes that the AAO's decision was issued on June 20, 2007. The motion was improperly filed with the AAO on July 24, 2007, 34 days after the AAO decision was issued.

On motion, the petitioner has not presented persuasive evidence that the failure to file the motion within the 30-day time period should be excused. The petitioner does not assert that the delay in filing the motion was reasonable and beyond its control.

As a matter of discretion, the applicant's failure to file the motion within the period allowed will not be excused as either reasonable or beyond the control of the petitioner. Accordingly, the motion will be rejected as untimely filed.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The motion is rejected as untimely filed.