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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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*DA*

ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
BCIS, AAO, 20 MASS. 3/F  
Washington, D.C. 20536

[REDACTED]

JUL 24 2003

File: EAC 00 122 52200 Office: Vermont Service Center Date:

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:  
[REDACTED]

**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.

*Robert P. Wiemann*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Vermont Service Center. The director's decision was then appealed to the Administrative Appeals Office (AAO). That appeal was dismissed by the AAO. The matter is now before the AAO on a motion to reopen pursuant to 8 C.F.R. § 103.5. The motion shall be dismissed. The previous decision of the AAO will be affirmed.

The petitioner is a specialty fast food franchise with 35 employees and a gross annual income of \$1,000,000. It seeks to employ the beneficiary as a financial manager for a period of three years. The director determined that the petitioner had not established that the proffered position is a specialty occupation. The director's decision was appealed to the AAO who dismissed the appeal, finding that the proffered position is not a specialty occupation.

The regulation at 8 C.F.R. § 103.5 provides in pertinent part:

. . . Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, 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 was beyond the control of the applicant or petitioner.

Counsel seeks to reopen the decision of the AAO that was issued on May 17, 2002. The motion to reopen was filed on July 16, 2002, and would have been timely if received by the Bureau on or before June 19, 2002. The motion is, therefore, not timely. Counsel asks that the motion be granted out of time as counsel had just been retained in the case. The motion's late filing will not be excused as there has been no showing that the delay in filing was reasonable and beyond the control of the petitioner. Counsel's statement, that he had just been retained, is not sufficient ground for the Bureau to permit the late filing as a matter of discretion. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5 (a) (4).

**ORDER:** The motion is dismissed. The previous decision of the AAO dated May 17, 2002 is affirmed.