

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

File: EAC-98-210-50111

Office: VERMONT SERVICE CENTER

Date: MAY 13 2003

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:



**PUBLIC COPY**

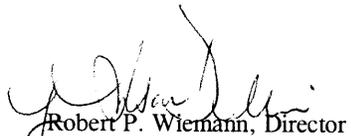
INSTRUCTIONS:

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 nonimmigrant visa petition was approved by the Director, Vermont Service Center. Based upon information obtained from the beneficiary during his visa issuance process at the American Embassy, the director determined that the beneficiary was not clearly eligible for the benefit sought. Accordingly, the director properly served the petitioner with his notice of intent to revoke approval of the visa petition and his reasons therefore, and ultimately revoked the approval of the petition. An appeal and subsequent motion were dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a second motion to reopen and reconsider. The motion will be dismissed.

The petitioner is a wholesaler and dealer of watches and precious materials with two employees and a gross annual income of \$240,000. It seeks to employ the beneficiary as an accountant for a period of three years. The director determined the petitioner had not established that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, counsel had provided additional information in support of the appeal.

The AAO dismissed the appeal reasoning that the petitioner had not submitted sufficient information to demonstrate that the beneficiary was qualified to perform the duties of a specialty occupation.

On motion, the petitioner's president maintained that he had additional evidence to be considered. No additional evidence had been submitted, however, and the motion was dismissed for not having been properly filed.

On second motion, the petitioner submits additional evidence to demonstrate that the beneficiary is qualified to perform the duties of the proffered position.

Pursuant to 8 C.F.R. § 103.5(a)(4), a motion that does not meet applicable requirements must be dismissed. Pursuant to 8 C.F.R. § 103.5(a)(1)(i), any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider.

The record reflects that the motion to reconsider was filed on April 2, 2002, 70 days after the decision was dismissed by the AAO on January 22, 2002. Furthermore, even if the AAO were to consider the receipt date of March 1, 2002, when the motion was improperly filed with the AAO, the motion to reconsider would

still have been received 38 days after the AAO's decision dated January 22, 2002. In view of the foregoing, the motion has not been properly filed, and must be dismissed.

**ORDER:** The motion is dismissed.