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Citizenship and Immigration Services

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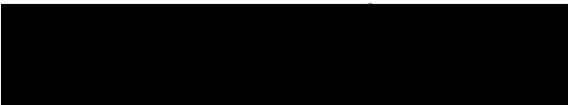
ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 MASS. 3/F  
425 Eye Street N.W.  
Washington, D.C. 20536



NOV 22 2003

File: SRC 01 279 51887 Office: TEXAS 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:

SELF REPRESENTED

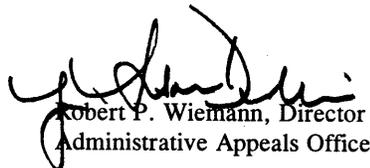
INSTRUCTIONS:

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 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 Citizenship and Immigration Services (CIS) 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 Director of the Texas Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The petition shall be remanded to the director to treat the appeal as a motion.

The petitioner is a computer consulting company. It has 15 employees, a gross annual income of approximately \$2,000,000, and seeks to employ the beneficiary as a computer programmer. The director denied the petition on the basis that the beneficiary was not qualified to perform the duties of a specialty occupation.

An affected party has 30 days from the date of an adverse decision to file an appeal. 8 C.F.R. § 103.3(a)(2)(i). If the adverse decision was served by mail, an additional three days is added to the proscribed period. 8 C.F.R. § 103.5 (a)(b). The record reflects that the director sent her decision of May 7, 2002, to the petitioner at its address of record. The appeal was received by Citizenship and Immigration Services (CIS) 36 days later on June 12, 2002. Therefore, the appeal was untimely filed.

An appeal that is not filed within the time allowed must be rejected as improperly filed. 8 C.F.R. § 103.3(a)(2)(v)(B)(1). If, however, an untimely appeal meets the requirements of a motion to reopen or reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5 (a)(2). 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 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).

The director's decision determined that the beneficiary did not qualify to perform the duties of a specialty occupation. The director noted that: the petitioner failed to submit proof of the beneficiary's foreign degree; and that there were discrepancies in the dates of the beneficiary's work experience for evaluation purposes. The director further held that the beneficiary had abandoned her application for a change of status by leaving the United States while the application was pending.

On appeal, the petitioner provided: a copy of the beneficiary's foreign diploma that was obtained subsequent to issuance of the director's decision; an affidavit from the beneficiary stating why she left the United States while her application for change of status was pending and indicating that she had no intention of

abandoning her claim; opinion letters authored after the director's decision addressing the qualifications of individuals holding Microsoft Certified Professional certification; a statement from the Director of Print Consultants of New Delhi, India indicating that the beneficiary had completed a one year course in computer applications in 1999; and a statement from a previous employer clarifying the beneficiary's dates of employment and job experience. The evidence submitted by the petitioner satisfies the requirements of a motion. Therefore, the petition will be remanded to the director to treat the appeal as a motion. The director may request any additional evidence deemed necessary to assist her with the determination.

As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The petition is remanded to the director for entry of a new decision.