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U.S. Department of Homeland Security
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Washington, DC 20536

**U.S. Citizenship
and Immigration
Services**

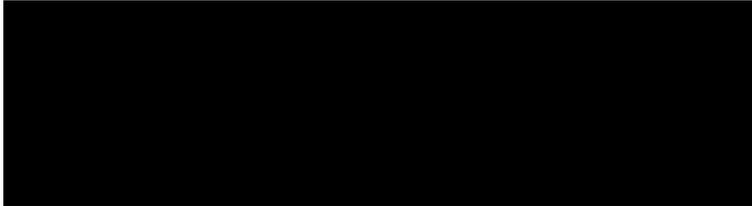


FILE: WAC 01 279 52799 Office: CALIFORNIA SERVICE CENTER Date: FEB 02 2004

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

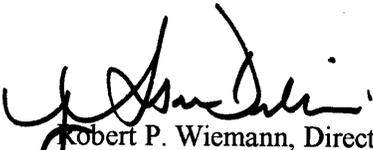
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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, Director
Administrative Appeals Office

DISCUSSION: The Acting Director of the California Service Center denied the nonimmigrant visa petition and dismissed a subsequent motion. The matter is now before the Administrative Appeals Office AAO on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a residential care facility that employs 39 persons and has a gross annual income of \$1,200,000. It seeks to employ the beneficiary as a medical writer. The director denied the petition on the basis that the proffered position did not meet the definition of a specialty occupation.

Pursuant to 8 C.F.R. § 103.3(a)(2)(i), an affected party has 30 days after service of a decision to file an appeal with the office that made the unfavorable decision. The record reflects that the acting director sent her decision of March 18, 2002 to the petitioner and to counsel at their addresses of record; the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), received the motion 36 days later on April 24, 2002. Therefore, the motion was untimely filed, and the acting director's decision became final. On August 7, 2002, the director notified counsel and the petitioner that the petitioner's motion to reopen or reconsider had been dismissed.

On appeal, counsel states that CIS should accept the postmark date of April 15, rather than the actual date of receipt at the Service Center on April 24, as the response date. Counsel submits evidence that the Form I-290B was placed in the U.S. mail on April 15, 2002. Counsel asserts that he relied on timely delivery by the United States Postal Service, and that nine days in transit was unusual and unexpected.

The evidence fails to overcome the reason for the director's dismissal of the motion. Although counsel asserts that CIS should accept the mailing date rather than the receipt date as the date the Form I-290B reached the service center, he does not support his assertion by any pertinent precedent decisions, or establish that the director misinterpreted the evidence of record.

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v). As neither the petitioner nor counsel presents additional evidence on appeal to overcome the decision of the director, the appeal will be summarily dismissed in accordance with 8 C.F.R. 103.3(a)(1)(v).

The burden of proof in this proceeding rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.