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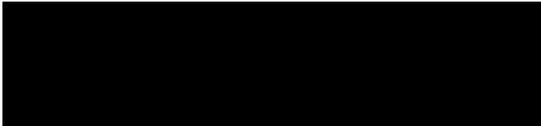
U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

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U.S. Citizenship
and Immigration
Services

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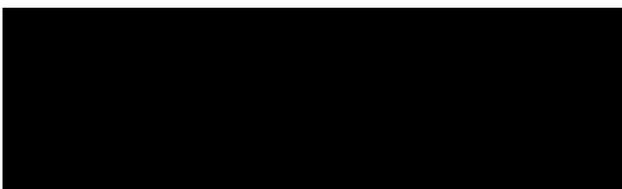
FILE: EAC 01 138 50276 Office: VERMONT SERVICE CENTER

Date: JUN 24 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.

Mari Johnson

to Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition, accepted a subsequent appeal as a motion to reopen, and ultimately affirmed his decision to deny the petition. 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 dismissed.

The petitioner is an international travel agency that seeks to employ the beneficiary as a travel executive. 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 and the beneficiary was not qualified to perform the duties of a specialty occupation. The AAO affirmed the director's finding that the proffered position did not meet the definition of a specialty occupation and, therefore, dismissed the appeal.

An affected party has 30 days from the date of an adverse decision to file a motion to reopen or reconsider a proceeding before Citizenship and Immigration Services (CIS). 8 C.F.R. § 103.5(a)(1)(i). If the adverse decision was served by mail, an additional three-day period is added to the 30-day period. 8 C.F.R. § 103.5a(b). Any motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The petitioner's motion does not meet applicable requirements because it was not timely filed. The AAO mailed its decision to the petitioner on January 23, 2003. CIS received the petitioner's motion 55 days later on March 19, 2003. Neither counsel nor the petitioner presents any evidence for CIS to consider regarding the delay in timely filing the motion. 8 C.F.R. § 103.5(a)(1)(i). Accordingly, the motion will be dismissed.

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 dismissed.