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

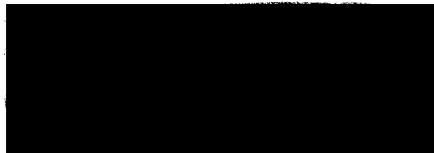


FILE: EAC 02 075 53599 Office: VERMONT SERVICE CENTER Date: **MAR 15 2004**

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:



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 director of the Vermont Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director to treat the appeal as a motion.

The petitioner is a privately held corporation engaged in an import, marketing, distribution, and wholesale business which concentrates on hand-made woolen carpets and handicrafts from Nepal, India, Pakistan, China, and other parts of the world. The petitioner seeks to employ the beneficiary as a market research analyst. In order to so employ the beneficiary, the petitioner seeks to classify him 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 evidence of record did not establish that the proffered position met the definition of a specialty occupation.

An affected party has 30 days from the date of an adverse decision to file an appeal, and the appeal must be filed with the Citizenship and Immigration Services (CIS) office where the unfavorable decision was made. 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. 103.5a(b).

The record reflects that the director sent his decision of July 12, 2002 to counsel at counsel's addresses of record. The record also reflects that, on August 9, 2002, counsel submitted a motion to Citizenship and Immigration Services (CIS). However, CIS rejected and mailed back the motion to counsel on August 23, 2002, because the matters were submitted without a filing fee. CIS then received the instant appeal on September 5, 2002, which is 55 days after the director's decision. Accordingly, 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).

On appeal, counsel submits evidence that satisfies the requirements of a motion to reconsider. Therefore, the matter will be remanded to the director to treat the appeal as a motion. The director may request any additional evidence deemed necessary to assist him 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.